Commonwealth of Pennsylvania

DEPARTMENT OF AGRICULTURE
DAIRY AND FOOD DIVISION

BULLETIN No. 240

PRELIMINARY REPORT

OF THE

DAIRY AND FOOD COMMISSIONER

FOR THE YEAR 1912

N. B. CRITCHFIELD, *Secretary of Agriculture*

JAMES FOUST, *Dairy and Food Commissioner*

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VIRTUE
LIBERTY AND
INDEPENDENCE

LETTER OF TRANSMITTAL.

Harrisburg, Pa., *December 31, 1912.*

Hon. N. B. Critchfield, Secretary of Agriculture:

Dear Sir: I have the honor to submit herewith a preliminary report of the Dairy and Food Division of the Department of Agriculture for the year ending December 31, 1912. It covers the operations for the year and contains some details that may be useful for public information.

I have the honor to remain,

Very respectfully,

JAMES FOUST,
Dairy and Food Commissioner.

PREFACE.

In view of the fact that the full Report of the Department of Agriculture for the year 1912, containing Reports of the several Divisions of the Department, will not be ready for distribution for some weeks, the Dairy and Food Commissioner has, in recent preceding years, furnished the Head of the Department with the following preliminary report. In order that this information may be promptly made available to the public, its issue as a bulletin of the Department is authorized.

The more detailed report of the operations of the Dairy and Food Bureau will appear in the regular Annual Department Report.

N. B. CRITCHFIELD,
Secretary of Agriculture.

PRELIMINARY REPORT OF THE DAIRY AND FOOD COMMISSIONER

INTRODUCTORY REMARKS.

The laws with whose enforcement this Division of the Department is charged are the same as for the year 1911, and are sufficiently described, so far as the legislation of that year is concerned, in my last annual report.

JUDICIAL CONSTRUCTION OF THE FOOD LAWS.

Before laws can have their full force and effect, however, they commonly require judicial interpretation at various points or judicial confirmation of their constitutionality. During the past year, the courts have handed down several decisions of great importance to the enforcement of several of the food laws of this Commonwealth. These decisions merit individual conisderation.

COLOR IN OLEOMARGARINE.

The oleomargarine act of May 29, 1901, prohibits the manufacture or sale of oleomargarine unless it "be made and kept free from all coloration or ingredients causing it to look like yellow butter"; or if it be "made or colored so as to resemble or be in imitation of yellow butter."

These words of the oleomargarine act have been the subject of legal contest at three important points. Those citizens who have been interested in this law, will be the better able to understand the legal difficulties with which the Dairy and Food Division has been confronted in its endeavor faithfully to enforce this law, after careful consideration of these points.

The pronounced yellow tints observed in much of the oleomargarine sold for some years past have undoubtedly been due in large degree to the use, as an ingredient in its making, of a deep yellow colored cottonseed oil. The experts for this Division have frequently testified that the use of this ingredient is not essential to the manufacture of

oleomargarine. The defense has asserted that whether or not this be theoretically true, as a matter of fact the use of cottonseed oil is a commercial necessity in oleomargarine manufacture, and that its use as an ingredient can not, under the provisions of the present Constitution of Pennsylvania, be made a bar to the sale of such oleomargarine. Objection having been made in the case of Commonwealth vs. Mellet to the introduction of rebutting testimony by the Commonwealth to the effect that, even if cottonseed oil be deemed commercially necessary in oleomargarine manufacture, such qualities of the oil can be employed as shall not work the prohibited coloration, the case went up to the Superior Court upon this, with other points. In a decision written by Chief Justice Rice (Commonwealth vs. Mellet, 27 Superior 41) the Court said upon this point:

> "On the trial of an indictment for selling oleomargarine colored yellow to resemble butter, if it is competent for the defendant to prove that cottonseed oil is, in a commercial sense, a necessary constituent of oleomargarine, it is equally competent for the Commonwealth to introduce the explanatory proof in rebuttal that the necessary use of cottonseed is not to give the product in which it is used the color of yellow butter."

The second point of legal contest has related to the meaning of the word "coloration" above quoted. The national act laying a tax upon oleomargarine establishes a rate for oleomargarine which has been subjected to "coloration" much higher than that fixed for uncolored oleomargarine. Executive interpretation of the national act has given to the term "coloration" as therein used the meaning only of "artificial coloration," with the qualification that an oleomargarine which contains an ingredient of any nature, such for example as palm oil which, in its highly colored, unrefined state is not deemed by civilized peoples to be fit for use as a food, and which, in the case of oleomargarine, is employed solely for the purpose of imparting color thereto, is to be deemed to have been artificially colored. This qualified meaning of the word "coloration" should, it has been contended by oleo interests, be that given to the same word in the Pennsylvania act, and one or more of the district courts of the Commonwealth have so held. In the case previously mentioned, this point also went up to the Superior Court, which said:

> "On the trial of an indictment for selling oleomargarine 'made or colored so as to resemble or be in imitation of yellow butter,' a conviction may be sustained, although there is not evidence of the artificial coloration of the oleomargarine by the addition, thereto, in the process of manufacture or afterwards, of any substance which had no other function than to cause it to resemble and be an imitation of yellow butter. A consideration of the subject shows that the latter act is not to be given a construction which will restrict it to 'artificial coloration.'"

The third point of contest has been as to the interpretation of the words "yellow butter" as used in the statute. The contention of the defendants has commonly been that the legislative intent in the use of these words was to signify "standard yellow" butter, "commercially yellow" butter, butter of the color possessed by that made from the milk of grass-fed cattle in the month of June; and that, therefore, all oleomargarine possessing a yellow color of less depth or intensity, was legally salable in the State. This view of the meaning of the word "yellow" has been vigorously supported by testimony for the defense and by ingenious arguments by skillful attorneys in their employ. Indeed, the attempt has been made to give to the word "yellow," the meaning solely of the words "chrome yellow," since this color is sometimes used as a standard of reference by the painter and the physicist. The Commonwealth has contended that the words mean all that they would normally mean to the common people; that the adjective "yellow" as used in the act includes any tint that the common people would call "yellow" when appearing in butter. The ingenuity of the defense has in many cases thrown the minds of the jury into doubt as to the meaning of the word "yellow" in this connection, with consequent loss of verdicts for the Commonwealth; and this confusion has in some instances been shared even by those learned in the law, despite the finding by Judge Rice in the Mellet decision that it was not the purpose, in the oleomargarine act, to fix as a standard butter highly colored artificially nor something which may not have been, in fact, pure butter. In two appeals taken by defendants to the Superior Court upon this issue, that judicial body has, through opinions written by Judge Henderson, more explicitly than ever confirmed the correctness of the position taken by the Dairy and Food Division. The two cases here referred to are those of Commonwealth vs. Harris A. Clewell, (No. 145 October Term 1911), and Commonwealth vs. Alexander T. Ignativig, (No. 136 same Term). In the former of these two cases, the Court said:

> "The defendant asks us to declare that when the Legislature speaks of 'yellow butter' it means butter having the color of that product made in the month of June, but we are unable to find either in the words of the statute or from a consideration of the reasons leading to its enactment any warrant for such construction. As has been repeatedly stated the principal object of the act was to prevent deception by dealers in oleomargarine and it would be a remarkable inference that care was only exercised toward the safeguarding of the public against imposition as to butter made during one-twelfth of the year. Witnesses are not necessary to show that butter is not all of the same color whether made in the month of June or at any other time. Different shades of yellow appear in its production contingent on the breeds of cows, the feed used, the time of year in which it is made and the process of manufacture, and when the phrase 'yellow butter' is used we thing the Legislature intended to describe the general color

inhering in that product. Any other construction would open every market to the sale of oleomargarine made in imitation of butter and no prohibition would exist except as to the imitation of the highest natural color of butter or of butter colored in imitation of it. This would defeat the very purpose of the act. It is our duty to give it a reasonable construction and to enforce it according to its spirit as well as its letter. If we should hold that the words 'yellow butter' are equivalent to 'commercial butter' as contended for by the appellant we would be deciding that the law forbids the sale of oleomargarine not made and kept free from all coloration or ingredients causing it to look like butter having the highest natural color of yellow or butter artificially colored in imitation of such highest natural color. This would be equivalent to re-enacting the statute and giving it an application and limitation which could not have been in legislative contemplation. The whole history of the legislation on this subject shows that what was aimed at is the prevention of fraud on the consumers by the sale to them of another substance as and for butter. It was recognized that oleomargarine when not artificially colored has a white or very light shade and that some butter because of the use of excessive heat in the making or some other cause might also be white or very light and that to make white butter a standard would be practical prohibition of the manufacture of oleomargarine at all. Hence, the qualifying word 'yellow.' But there was no attempt to fix an absolute shade of yellow nor intention to permit an imitation of all shades of butter except that which was colored to the highest degree of yellow which butter in its natural condition ever possesses. It was unimportant, therefore, to know what was recognized in the trade in New York or elsewhere as 'yellow butter.' It may be as stated by the learned counsel for the appellant that this is butter colored to imitate June butter and that the public taste at the large centres of trade demands this color, but a large part of the butter produced in the Commonwealth is consumed in the localities in which it is produced and is sold from farms and creameries to local customers. These consumers were within the view of the Legislature as well as dwellers in the largest cities and are entitled to the same protection. The yellow butter to which the act refers is not that sold in New York or Philadelphia alone but that which is produced on the farms and in the factories as well and is sold in its natural color or with the addition of coloring matter to increase its yellowness."

The explicit declaration of the Superior Court upon this color question will, we believe, make the successful conduct of prosecutions against the vendors of highly colored yellow oleomargarine much more certain in result than it has been for many years past. Indeed, since the handing down of those decisions there has been very little oleomargarine of pronounced yellow color appearing on sale in the State.

CONFECTIONERY IS FOOD

In the case of Commonwealth vs. Pflaum, heard before the Court of Quarter Sessions of Philadelphia county, in March, 1911, the defense raised the points that since the title of the general food act does not specifically mention confectionery, the act is invalid so far as this

particular article of commerce is concerned; that inasmuch as the act tolerates the presence of sulphur dioxide under certain conditions in dried fruits and molasses, it is unconstitutional to prohibit the addition of this chemical to confectionery; also that the act itself is unconstitutional because it discriminates in freeing retail dealers from prosecution in cases in which they have sold under guaranty from the manufacturer or wholesaler, and finally, that even if the addition of sulphur dioxide directly to confectionery is prohibited, this prohibition cannot apply in cases where the chemical is introduced only very indirectly as a constituent of a single ingredient of the confectionery.

This case was one in which confectionery purchased from the defendant by one of the agents of the Division was, upon analysis by Dr. C. H. LaWall, one of the chemists of the Division, found to contain sulphur dioxide. The prosecution in the Philadelphia courts resulted from this finding and the verdict of guilty was recorded. The defendant thereupon entered a motion in arrest of judgment. A decision in favor of the defense having been given, the Commonwealth appealed the case to the Superior Court which in its decision of October, 1911, reversed the finding of the lower court as to the unconstitutionality of the act. Thereupon the defense appealed the case to the Supreme Court, before whom it was argued in the January Term of 1912. The case for the Commonwealth was handled in a very able manner by E. C. Rhoads, Esq., of Philadelphia, and by the Hon. W. M. Hargest, Assistant Deputy Attorney General, to whose able and cordial assistance in this and other legal matters the Division is much indebted, and also by the Hon. John C. Bell, Attorney General for the Commonwealth. The judgment of the Supreme Court is given in full in an appendix hereto, but we may state briefly in this connection that the Court decided that the present title of the act is sufficiently comprehensive to give notice of the prohibition as to adding sulphur dioxide to confectionery, inasmuch as confectionery is a food; that the distinction between dried fruits and molasses, on the one hand, and all other foods, including confectionery, on the other, as respects the addition of sulphur dioxide, is not a discrimination in violation of the Constitution, but is competent for the Legislature as an exercise of its powers of classification, so the act is not open to the objection of unlawful classification and discrimination because it relieves retailers from prosecution when they are possessed of a guaranty from the manufacturer or wholesaler, and finally, that the fact that the sulphur dioxide was added indirectly, as above described, is not material.

DIVISION OF OFFICIAL SAMPLES

The Commissioner is in frequent receipt of requests from defendants charged with the adulteration or misbranding of foods, for the delivery to them to be examined by their own experts, of portions of the official sample. Such requests are consistently refused because, under the decision of Judge Bell, of the Blair county court, in the case of Commonwealth vs. Koller et al., not only was the right of the Commonwealth to refuse such requests affirmed, but also the duty of such refusal was implied because of the fact that the form of the pure food law being that of a criminal law, it becomes necessary that the Commonwealth shall prove its case beyond a reasonable doubt in order to obtain a verdict for the people. The reasons for the judgment are stated in an able brief presented to the Court in that case by Hon. A. H. Woodward, General Counsel for the Division, and in the opinion of the Court, both of which are printed in the appendix hereto.

Notwithstanding the fact that under this decision the policy will be consistently followed of declining to place portions of the official sample in the hands of the defense for examination by parties unknown to the Commonwealth, it is not the intent to assume that the agents and chemists of this Division are infallible, and wherever practicable precautions are taken to hold a sufficient portion of the original official sample for re-analysis should a reasonable doubt arise as to the correctness of the primary report on which prosecution is based, and under certain well defined conditions, the Commissioner stands ready to arrange for a check analysis of the reserve portion of the sample by competent chemists representing both the Division and the defendants. In other words, it is not the aim of the Division simply to win cases upon technicalities. Its duty is to protect the people. This duty does not, however, require anything but square dealing with the producer, manufacturer and dealer.

MONTHLY BULLETIN

The Monthly Bulletin of the Bureau has been continuously published throughout the year for the purpose, as in the past, of currently informing the public concerning the work of the Bureau and upon subjects relating thereto. The continued public demand for this Bulletin shows its value for the purposes here indicated.

In addition to these Monthly Bulletins, the Division has issued four special bulletins during the year, which have appeared in the general departmental series: No. 216, "Cheap Confectionery," by Charles H. LaWall, Chemist; No. 221, "Preliminary Report of the Dairy and

Food Commissioner for the Year 1911"; No. 224, "Commercial Table Syrups and Molasses," by Wililam Frear, Chemist; No. 232, "Law Bulletin."

In the Bulletin first mentioned, Dr. LaWall reports the results of the examination of 259 samples of cheap candies, chiefly "penny goods." In the Bulletin No. 224, Dr. Frear likewise presents the results of the examination of a large number of samples of table syrups and molasses officially sampled by agents of the Division, and discusses in a popular way the methods of manufacture and raw materials used for these commodities. In Bulletin No. 232 is given, in addition to the laws with whose enforcement the Division is charged and the regulations for the enforcement thereof, a highly valuable digest of decisions relative to food laws, prepared by the Hon. A. H. Woodward, General Counsel of the Division. The demand for these bulletins has been large, and it is believed that by their issue the Division has performed an important service to the people of the Commonwealth.

SUMMARY OF WORK FOR THE YEAR 1912

In the Appendix to this report are presented summaries showing the list of articles purchased by the agents and analyzed by the chemists of the Bureau during the year, and also a table giving a list of those classes of articles found adulterated and misbranded, and made the bases of prosecutions that have been terminated during the year. The recapitulation of samples analyzed during 1912 shows a total of 7,204, a number somewhat smaller than that for the year 1911. The difference is due to the smaller number of milk samples analyzed during the past year as compared with that for the preceding year. As a matter of fact, the analyses of other classes of food products were nearly 600 more than in 1911. The number of cases terminated in 1912 was 1,049, the largest annual number since the creation of the Bureau.

In the following portion of this report the several classes of food products analyzed will be considered separately in detail.

DAIRY PRODUCTS

The number of milk samples examined during 1912 was 3,321, including 44 samples sold as skim-milk. There were prosecuted and terminated during the year 294 cases, in which skimming, watering, or deficiency in the standard had been found. This is equivalent to a little less than 9 per cent. of the total number of samples examined. There were also 6 cases terminated in which the charge was the addition of preservative, comprising 5 cases formaldehyde and 1 case boric acid. The number of instances of such adulteration were even less than in 1911.

There were examined during 1912, 802 samples of cream, and 88 cases, corresponding to about 11 per cent. of the whole, were prosecuted to a termination because of a deficiency in the standard of fat.

Five hundred and twenty-eight samples of butter were examined and 4 prosecutions respecting this material were terminated; 3 in which the charge was the presence of an excessive amount of water, and 1 on account of an unwholesome and poisonous condition of the article at the time of sale.

Eleven samples of cheese were examined with but 1 prosecution terminated under the Act of 1897, because of misbranding.

OLEOMARGARINE

Of this material, 113 samples were examined during the year and 58 cases were prosecuted to termination for violations of the oleomargarine act of 1901. Of these 58 cases, 25 were on account of the yellow color of the oleomargarine, 21 because of selling without a license or without proper signs, and 12 were for selling the oleomargarine as butter.

As remarked in a previous paragraph, there has been a marked improvement in the observance of the law with respect to the color under which oleomargarine may be legally sold, and it is the earnest hope that the present condition, the definite interpretation of the law in this particular may result in its being rarely violated and in the full protection of the vendors of butter and oleomargarine, respectively, and of the consumers thereof from the disadvantages accruing to each where the violations of the provisions of this law are frequent.

RENOVATED BUTTER

Of this commodity, 10 samples were examined during the year and 1 case terminated for a sale without proper marking and without license.

ICE CREAM

Of these materials, 337 samples were examined and 48 cases were terminated, all of them upon the charge that the respective samples fell below the established standard for fat. The proportion between these numbers is 7 to 1; that is to say, of samples collected about one-seventh failed to meet the present lenient requirements of composition established by the present ice cream act.

MEATS

Of the various meat preparations, including not only the fresh meats, but also the various package meats, 51 samples were analyzed. Four cases were terminated in which the article involved was Ham-

burger steak, reported by the chemist as containing added sulphites. As 24 samples of Hamburger steak were analyed, this corresponds to 1 sample thus adulterated out of every 6 examined. This condition is far from being satisfactory and yet it is a great improvement over what has been observed in earlier years. Of the various meat samples examined, 13 cases were terminated on charges brought for the contaminated and decomposed condition of the articles. It should, of course, not be inferred that the proportion here represented corresponds to that obtaining in the meat trade in general, for the reason that samples of fresh meat were rarely taken except where there was good reason to believe that the articles were not sound. The adulteration of fresh meat preparations is very rare, so that little reason exists for wholesale examination of these commodities except with respect to their soundness and freedom from contamination by flies, dust, etc.

Of sausage, 109 samples were analyzed during the year and 25 cases terminated in which the charge was because of the addition of vegetable flour or cereals, and 14 of these cases because of the addition also of water in excess of the amounts normal to the meats in the sausage; 2 cases were terminated upon charges of the addition of sulphites; 7 cases were terminated in which the charge was the selling of sausage decomposed or putrid, and thus unfit for food. The percentage of cases terminated is much greater than for the year 1911, but as a matter of fact, a large fraction of these cases were begun in that year. The condition of sausages now on sale is very greatly better than a first glance at the figures here given would indicate, for the reasons just stated.

Thirty-six samples of fish and oysters were examined and 2 cases terminated, in which the charge was the sale of oysters containing added water.

LARD

Of this product, 12 samples were examined, 4 of them having been sold under declaration of their compound nature. Six cases were terminated in which this article was concerned, 5 of the prosecutions having been instituted because of adulteration by the addition of beef stearin or cottonseed oil, and 1 because the article was compound, and not branded as the law requires.

EGGS

One hundred and sixty-four samples of eggs, cracked, dried, frozen, liquid, opened and in the shell were examined during the year, and 31 cases were terminated on the charge of having been sold or offered

for sale when in condition unfit for use as food. The larger fraction of the violations of the egg act of 1909 have been found in the two principal cities of the Commonwealth. In one case, in Philadelphia, the quantity involved was four and one-half tons. Three cases were terminated in which the charge was misbranding, and that the eggs were sold as and for fresh eggs when, in fact, they were not so.

MINCE MEAT

Of these products, 9 samples were examined and a single case terminated on the charge of containing benzoic acid without declaration, as the law requires.

FRUIT AND VEGETABLE PRODUCTS

CANNED FRUITS AND VEGETABLES

Of these, 94 samples were examined during the year, with but one case affecting vegetables terminated, in which the charge was the addition of sulphate of copper to a lot of peas. Upon the whole the condition of the canned products examined was such as to eliminate criticism. And three cases were terminated affecting Maraschino cherries, the charge being the addition, undeclared, of benzoate of soda or sulphur dioxide.

CATSUPS, ETC.

Of catsups, salad dressings, table oils, etc., 368 samples were examined. Cases were terminated affecting these materials, as follows: Catsup containing excessive amounts of sodium benzoate, 66; containing saccharin, 9, and because of decomposition, or manufactured from decomposed material, 7; India relish containing saccharin, 1; olive oil adulterated with cottonseed oil, or imitated thereby, 5.

The chief subject of adulteration in this group of materials is catsup. The large number of cases in which benzoate of soda is found in excess of the amount legally tolerated, is noteworthy. It is furthermore worthy of note that with the application of improved methods now available for determining the soundness of this commodity, a considerable fraction of the samples examined have been found to be decomposed, and in many cases to have been manufactured from materials decomposed when used.

DRIED FRUITS AND VEGETABLES

Of these, 229 samples were examined and 116 cases were terminated, because the vendors failed to declare, as required by the law, the presence of the sulphur dioxide with which these dried fruits had been treated. Reports of the agents indicate that the containers in which these dried fruits are shipped by the packers and wholesalers usually bear the required declaration and that, in many cases, the invoices are so marked as distinctly to inform the retail merchant of the presence of this preservative. The unfortunate frequency with which the law is violated in the retail sales of these commodities is, therefore, the result of neglect on the part of the merchant or his employes. It was the purpose of the Legislature, by means of the required declaration, to see that the consumer was warned of the presence of this undesirable preservative, so that opportunity for refusing the product might be afforded, and if the purchase were made with the warning, that the housewife might have notice so that such methods of washing, cooking, etc., might be applied as to reduce to a minimum the quantity of sulphur dioxide in the food at the time it was eaten. There were 2 cases terminated because the dried fruits were contaminated and decomposed in such manner as to render them unfit for food.

FRUIT BUTTERS, JAMS, JELLIES AND PRESERVES

Of these products, 32 samples were examined during the year. A prosecution was terminated in one case involving an adulterated jelly.

NUTS

Thirteen samples of various kinds of nuts were examined and 2 cases terminated, in which the charge was that the nuts were decayed and filthy. The condition of the nuts now on sale shows a decided improvement over that manifested in recent years.

VINEGAR

Of this class of products, 78 samples were examined by the Division chemists, and 38 cases were terminated, of which 28 were prosecuted on the charge of added water and, in some cases, apple solids which had not undergone the alcoholic and acetous fermentations. In 6 cases distilled vinegar had been sold as pure cider vinegar; in several cases this vinegar had been colored contrary to law, and in 1 case had less than the standard requirement of acetic acid.

Two contests have been made in as many district courts of the Commonwealth, with the intent on the part of the defendants of securing from the courts a decision that the addition of water or of apple solids not contained in vinegar is not in violation of the vinegar act of 1901. One of these courts sustained the contention of the defense in this particular, but a later decision by another court sustained the position of this Division, that such additions would constitute violations of that act.

BAKERY MATERIALS

Of these raw materials other than those already considered, 120 samples were examined during the current year and 10 prosecutions were terminated. Of these, 7 involved cases in which the charge was the addition of nitrous acid to flour; 1 the sale of corn meal, sour and unfit for food, and 2 the sale of gelatine containing sulphites.

FLAVORING EXTRACTS

Of these, 44 samples were examined by the analysts of the Division in 1912, and 4 cases were terminated under the charge of adulteration. Those who are familiar with the reports for the earlier years of this Division's operations, will note the vast improvement in the quality and honesty of labeling of these flavoring materials.

BAKERY PRODUCTS

Fifty-eight different bakery products were examined in 1912, and 7 cases were terminated in which the charges involved, in 6 cases, the exposure of these materials in such manner as to render them unfit for human consumption, and in 1 instance, the addition of coloring matter to cake in such manner as to indicate the presence of eggs when the latter were absent.

BREAKFAST FOODS

Three samples which the agents suspected of being in condition unfit for sale for use as food were submitted to the analysts and, in each case, with the confirmation of the judgment of the agents. The prosecution was terminated in each of these cases.

The Commissioner took special pains to call the attention of the retail trade to the importance of carefully examining the stocks carried over the summer months, so that the dealers might thus reject all that appeared unfit or doubtful. Consequently, the agents were directed to give special attention to these stocks. It was evident

that the dealers, for the most part, exercised due care and thus protected their consumers from the use of these undesirable, deteriorated parts.

CANDY

Sixty-three samples of various kinds of confectionery were analyzed in 1912 and 28 prosecutions were terminated involving adulteration of this group of commodities. In 12 of the cases thus terminated, the charge was that sulphur dioxide was present; in 3 that paraffin was present; in 3 that the name indicated the presence of chocolate, whereas no chocolate could be found; and in the 3 the charge was the coating of the material with resinous glaze. The general condition of the confectionery on sale in Pennsylvania has distinctly improved during the past year, as respects the use of resinous glaze, of which very little now appears. In other respects the comments made in the preliminary report of 1911 apply equally well to the conditions for the past year.

HONEY AND SYRUPS

But 15 samples of this description were examined during the year 1912. No cases for adulteration of these materials have been terminated during the year. The general condition of market goods of this group is fully discussed in Bulletin 224, earlier mentioned, copies of which are available for the information of all who are especially interested in these materials.

FRUIT SYRUPS

Of these, 31 samples were examined by the Division's chemists in 1912, and 15 cases were terminated, all involving strawberry syrup to which saccharin had been added.

NON-ALCOHOLIC DRINKS

The chemists of the Department examined 453 samples of non-alcoholic drinks in 1912, and 107 cases were terminated, in 83 of which the presence of saccharin was the ground for prosecution. A considerable proportion of the remaining cases were instituted because of the undeclared presence of benzoic acid; a number because the materials were sold under misleading names; and 1 case in which an article sold as sweet cider was found to contain considerable quantities of alcohol.

SPICES AND MISCELLANEOUS

There were examined during 1912, 11 samples of spices and 85 samples of miscellaneous materials. No case was terminated for the adulteration of spice, a condition vastly improved over that which appeared some years ago. Among the miscellaneous products, 17 samples of coffee preparations were examined and 4 cases were terminated, in which other materials had been substituted in part for coffee. A few of the miscellaneous materials were so-called fresh fruits and vegetables, for some of which prosecutions were terminated because of the unfit condition of the materials for human consumption.

GENERAL CONDITIONS

Of the adulterations represented in the 1,049 cases terminated during the year, 709, that is nearly 25 per cent., were represented by adulterated or deficient samples of milk and cream; 10 per cent. by adulterated non-alcoholic drinks; and 20 per cent. by bad eggs, adulterated fruit syrups, ice creams, oleomargarine, sausage and vinegar. All remaining classes of food substances were represented by only 30 per cent. of the cases terminated, two-thirds of these being cases in which saccharin or benzoic acid had been added, in excess, to catsups, or in which sulphur dioxide was present, undeclared, in dried fruits, leaving but 10 per cent. of the cases affecting the great variety of other food products subject to the supervision of food control. Speaking in very general terms, the several classes of food products just named are represented by 6,000 samples examined and 950 cases terminated. The remaining classes of food products are represented by 1,250 samples examined and 100 cases terminated. The large proportion of adulteration is represented in the groups first above named, and only a very small fraction are the principal food commodities which constitute the major portion of the food supply of the Commonwealth.

Especial mention ought to be made of the Division's efforts to enforce the provisions of paragraph 6, section 3, of the food act of May 13, 1909, a paragraph relating to the adulteration of foods by contamination and decomposition. The terms of this paragraph of the act are very general and in some respects are such as to make difficult the successful prosecution of offenders as to these particulars. Nevertheless, there have been successfully terminated during the past year, for offenses under this paragraph of the general food law, 58 cases, and we are happy to report that while the conditions of keeping perishable food supplies are still far from ideal the campaign made during the summer of 1912 has resulted in a very marked improvement in the vendors' care upon these points.

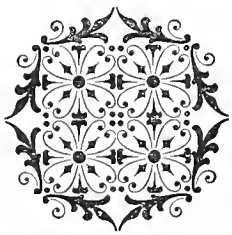
FINANCIAL STATEMENT

The financial statement appended hereto shows receipts for 1912 amounting to $136,125.49, and expenditures for the corresponding period of $82,049.65. Speaking in round numbers, the receipts for 1910 showed an advance of $34,000 over those for 1909; those for 1911, a further increase of $10,000, and those for the past year an increase of nearly $16,000. As the expenditures of the Bureau have consistently remained at about $80,000 per annum, the amount appropriated therefor by the Legislature, we venture to renew the expression, in our judgment, that in view of the receipts of the Bureau as well as of the great value of the work it performs for the public, there is no good reason why the sums it requires should not be freely provided for the maintenance of its work.

CONCLUSION

In the performance of the work of 1912 the Commissioner is indebted, as during the preceding year, for the continuous encouragement and support given by the Governor of the Commonwealth, the Hon. John K. Tener, and the Secretary of Agriculture, Hon. N. B. Critchfield. The Commissioner desires also to acknowledge the hearty co-operation given to him by the Attorney General's Department and by the public press of the State, and last, but not least, his appreciation of the efficient and loyal assistance of the special agents, chemists, special counsel and office force of the Bureau.

JAMES FOUST,
Dairy and Food Commissioner.



APPENDIX

SUMMARY

The following gives a list of articles analyzed by Chemists of this Bureau during the year 1912.

Article.	Number Analyzed.
DAIRY PRODUCTS:	
Butter,	528
Cheese,	11
Cream,	802
Milk, butter,	1
Milk, condensed,	4
Milk, evaporated,	11
Milk, skimmed,	44
Milk,	3,277
	4,678
OLEOMARGARINE,	113
RENOVATED BUTTER,	10
EGGS (Cracked, dried, frozen, liquid, opened and in shell),	164
BREAD, CAKES, PIES AND PUDDINGS:	
Bread,	2
Cakes, Assorted,	3
Cake, Coffee,	1
Cake, Drop,	1
Cake, Jelly Roll,	2
Cake, Layer,	1
Cake, Marble,	1
Cake, (no name given),	5
Cake, Pound,	5
Cake, Sponge,	5
Cake, Sponge with custard,	1
Cake, Wine,	1
Cream Nut Pattles,	1
Cream Puffs,	20
Ginger Snaps,	2
Lady Fingers,	1
Tea Bunns,	1
Pie, Custard,	1
Pie, Lemon,	1
Pie (no name given),	1
Pie, Peach,	1
Pudding, Plum,	1
Geilatin,	2
Jello,	1
	61
CANNED FRUITS AND VEGETABLES:	
Asparagus,	2
Beans, Baked,	1
Cherries,	7
Cherries, Bigarreaux,	2
Cherries, Cocktail,	1
Cherries, Maraschino,	31
Corn,	4
Figs in Maraschino,	1
Mincemeat,	9
Mushrooms,	5
Peas,	10
Peas, Freneh,	6
Pickles, Sour,	1
Pickles, Sweet,	5
Spaghetti,	1
Strawberries,	1
Tomatoes,	7
	94

SUMMARY—Continued

Article.	Number Analyzed.
CATSUPS, OIL, SALAD DRESSING, SAUCES, ETC.:	
Catsup (no name given),	111
Catsup, Tomato,	203
Horseradish,	3
Horseradish Dressing,	1
Ketchup, Tobasco,	2
Mango Chutney,	1
Oil, Olive,	40
Relish, Cucumber,	1
Salad Dressing,	1
Sauce, Challenge,	1
Sauce, Chili,	1
Sauce, Worcestershire,	3
	368
CONFECTIONERY:	
Burnt Peanuts,	1
Candied Fruit, Assorted,	1
Candied Fruit, Mixed,	1
Candied Pears,	1
Candy,	1
Candy Apples,	1
Candy, "Baby Creams,"	1
Candy Bananas,	1
Candy Cracker Jack,	2
Candy Hearts,	1
Candy Kisses,	2
Candy "Lolly Pops,"	1
Candy Macaroni,	1
Candy Peach Tarts,	1
Candy Prize Boxes,	1
Candy Sandwiches,	1
Candy Shortcake,	2
Candy Strawberries,	1
Candy Suckers,	1
Candy Wafers,	2
Candy Zig Zag,	1
Chocolate Candy,	1
Chocolate Candy Suckers,	2
Chocolate Coated Eggs,	2
Chocolate Coated Rabbits,	1
Chocolate Cream Candy Cake,	1
Chocolate Marshmallow Eggs,	1
Cocoanut Bonbons,	2
Cocoanut Candy,	1
Cream Candy,	1
Fudge (Cocoanut and Walnut),	2
Fudge (no flavor given),	1
Jelly Beans,	2
Jelly Eggs,	6
Marshmallows,	1
Marshmallow Cones,	1
Marshmallows, Toasted,	1
Mixed Candy,	2
Nut Candy,	1
Nut Caramels,	1
Nut Taffy,	4
Peanut Candy,	1
Salt Water Taffy,	1
Taffy,	1
Turkish Candy,	63
CORNSTARCH, CORNMEAL AND FLOUR:	
Cornstarch,	2
Cornmeal,	3
Flour, Buckwheat,	15
Flour (Buckwheat and Wheat Flour Compound),	1
Flour, Pancake,	2
Flour, Prepared Cake,	1
Flour, Wheat,	93
	117

SUMMARY—Continued

Article.	Number Analyzed.
DRIED FRUITS:	
Apples,	1
Apricots,	71
Peaches,	106
Pears,	1
Prunes,	4
Raisins,	46
	229
FLAVORING EXTRACTS:	
Extract, Almond,	1
Extract, Lemon,	10
Extract, Orange,	1
Extract, Peppermint,	1
Extract, Raspberry,	1
Extract, Vanilla,	21
Extract, Vanilla and Tonka,	1
Flavoring Extract,	2
Flavor, Peach,	1
Flavor, Pineapple,	2
Flavor, Raspberry,	1
Flavor, Strawberry,	2
	44
FRUIT, BUTTERS, JAMS, JELLIES AND PRESERVES:	
Butter, Apple,	2
Butter, Peanut,	7
Jam, Apricot,	1
Jam, Compound,	1
Jam, Fig,	1
Jelly, Apple,	3
Jelly, Apple and Grape,	1
Jelly, Apple and Orange,	1
Jelly, Apple and Quince,	1
Jelly, Apple and Corn Syrup,	2
Jelly, Red Currant,	1
Marmalade, Grape Fruit,	1
Marmalade, Scotch,	1
Preserves, Apple and Strawberry,	2
Preserves, Fig,	2
Preserves, Grape,	1
Preserves, Peach,	1
Preserves, Plum,	1
Preserves, Strawberry,	2
	32
FRUIT SYRUPS:	
Orange,	1
Raspberry,	3
Strawberry,	27
	31
HONEY AND SYRUPS:	
Honey,	3
Molasses, New Orleans,	2
Syrup, Cane and Maple,	2
Syrup, Corn,	1
Syrup, Golden Tree,	1
Syrup, Maple,	5
Syrup, Table,	1
	15
ICE CREAMS:	
Ice Cream, Cherry,	1
Ice Cream, Chocolate,	36
Ice Cream, Maple,	1
Ice Cream, Maple-Walnut,	2

SUMMARY—Continued

Article.	Number Analyzed.
ICE CREAMS—Continued.	
Ice Cream (no flavor given),	5
Ice Cream, Peach,	7
Ice Cream, Pineapple,	2
Ice Cream, Strawberry,	40
Ice Cream, Vanilla,	135
Ice Cream, Walnut,	8
	337
LARD:	
Lard,	8
Lard, Compound,	4
	12
FISH—CANNED, DRIED AND FRESH:	
Codfish, Fresh,	4
Codfish, Dried,	4
Codfish, Shredded,	2
Crabs, Deviled,	1
Fish, Fresh,	2
Lobster, Canned,	1
Salmon, Canned,	2
Salt Fish, Dried,	1
Sardines, Canned,	5
Oysters, Canned,	2
Oysters, Fresh,	12
	36
MEATS—CANNED AND FRESH:	
Bacon, Fresh,	1
Beefsteak,	2
Beef, Chipped,	1
Beef, Sliced, Canned,	1
Chicken, Fresh,	2
Corned Beef,	1
Corned Beef Hash,	1
Duck, Fresh,	1
Hamburger Steak, Fresh,	24
Ham, Boiled,	1
Ham, Minced, Canned,	1
Ham, Pressed,	2
Meat, Boiled,	1
Meat, Fresh,	5
Mutton, Fresh,	1
Potted Beef,	1
Potted Meat (Beef and Ham Flavor),	1
Potted Meat (Ham Flavor),	2
Veal, Fresh,	2
	51
SAUSAGE:	
Sausage, Bologna,	16
Sausage, Canned,	4
Sausage, Fresh,	13
Sausage, Fresh Pork,	54
Sausage, German Style,	3
Sausage, Half-smoked,	1
Sausage, Lunch,	1
Sausage, Vienna,	16
Sausage, Wiener,	1
	109
NON-ALCOHOLIC DRINKS:	
"Beerine,"	1
Birch Beer,	24
Cherry Cheer,	1
Cherry Snap,	1
Cherry Ze-Ro,	1

SUMMARY—Continued

Article.	Number Analyzed.
NON-ALCOHOLIC DRINKS—Continued.	
Cider, Champagne,	1
Cider, Cherry,	1
Cider, Fruit,	1
Cider, Sweet,	6
Coco Cola,	3
Crescent Beer,	1
Ginger Ale,	38
Grape Juice,	6
Iron Ale,	2
Iron Beer,	1
Jersey Creme,	1
Lemonade,	1
Lemon Juice,	1
Lemon Sour,	3
Lithia Water,	2
Malt Brew,	2
Marrowfood,	2
Merry Widow High Ball,	1
"Near Beer,"	6
Nectar,	1
Nep-to,	1
Orangeade,	3
Orange Julep,	1
Pineapple Juice,	1
Pop, Birch,	10
Pop, Cherbo,	1
Pop, Chocolate,	1
Pop, Lemon,	9
Pop (no flavor given),	3
Pop, Orange,	4
Pop, Raspberry,	1
Pop, Red,	6
Pop, Strawberry,	32
Pop, White,	4
Pop, Yellow,	1
Rasport,	1
Root Beer,	10
Sarsaparilla,	27
Soda, Birch Compound,	1
Soda, Cherry,	1
Soda, Chocolate,	2
Soda, Cream,	20
Soda, Ginger,	1
Soda, Lemon,	24
Soda (no flavor given),	96
Soda, Orange,	9
Soda, Peach,	1
Soda, Red,	3
Soda, Strawberry,	61
Soda, Vanilla,	2
Temperance Brew,	1
"Tonlca,"	1
Vin Fiz,	1
Wee Beer,	1
Weiss Beer,	1
Whannis Table Water,	1
"White Ribbon,"	1
Wini Vlna,	1
	453
NUTS:	
Black Walnuts,	2
Chestnuts,	5
Cream Nuts,	2
English Walnuts,	4
	13
SPICES, ETC.:	
Cinnamon, Ground,	1
Ginger, Ground,	1
Mustard,	2
Mustard, Prepared,	4
Pepper, Black, Ground,	2
Pepper, Red, Ground,	1
	11

SUMMARY—Continued

Article.	Number Analyzed.
VINEGAR:	
Vinegar, Apple,	4
Vinegar, Cider,	67
Vinegar, Distilled,	4
Vinegar (no name given),	1
Vinegar, Standard,	1
Vinegar, White,	1
	78
MISCELLANEOUS PRODUCTS:	
Aniseed,	1
Apples,	2
Cocoanut, Shredded,	1
Coffee "Combination,"	1
Coffee, Ground,	10
Coffee, Whole,	5
Coffee and Sugar,	1
Crisco,	1
Cucumbers,	1
Custard Powder,	3
Dates,	1
De Zerta,	1
Egg Powder,	1
Figs,	1
Food (no name given),	1
Fresh Fruit (no name given),	2
Grape Fruit,	1
Guava Jelly,	1
Ice Cream Cones,	3
Jelly Powder (Raspberry Flavor),	1
Maple Corn Flakes,	1
Matzoth Meal,	1
Mother's Crushed Oats,	1
Noodles,	12
Oranges,	3
Peaches,	3
Pie Preparation,	1
Potatoes,	2
Rice,	4
Soup, Tomato,	1
Soup Ringlets,	1
Strawberries, Fresh,	1
Sugar, Granulated,	3
Sugar, Powdered,	6
Tea, Green,	1
Tea Siftings,	1
Tomato Paste, Canned,	1
Tumeric,	1
Whiskey,	2
	85

RECAPITULATION.

Butter,	528
Cheese,	11
Cream,	802
Milk,	3,337
Oleomargarine,	113
Renovated Butter,	10
Eggs,	164
Fresh Meat,	38
Fruit Syrup,	31
Ice Cream,	337
Lard,	12
Non-Alcoholic Drinks,	453
Sausage,	109
Vinegar,	78
Food,	1,181
	7,204

NUMBER OF SAMPLES PURCHASED BY THE DAIRY AND FOOD AGENTS DURING YEAR 1912

Agent.	Number.
F. J. Whalen,	914
G. M. Pelton,	619
H. P. Cassidy,	563
James McGregor,	540
Robert M. Simmers,	517
C. C. Linton,	478
Archie Billings,	469
J. B. Kliniewski,	381
P. J. Magee,	375
M. J Walsh,	324
E. F. McCann,	321
W. F. Hill,	292
J. Jamison,	244
H. L. Banzhoff,	226
H. M. Gooderham,	206
John Jenkins,	203
E. P. Jones,	176
Daniel Seiler,	139
E. D. Miller,	129
I. J. Hughes,	38
W. E. Supplee,	9
J H. Gaunt,	2
G. T. Fleming, member of Erie Board of Health,	16
E. P. Loesch, member of Erie Board of Health,	16
Philadelphia Board of Health,	7
	7,204

CASES TERMINATED

THE FOLLOWING TABLE GIVES A LIST OF ARTICLES ANALYZED BY CHEMISTS AND FOUND TO BE IN VIOLATION OF THE FOOD LAWS, AND THE NUMBER OF SAMPLES OF EACH PRODUCT ON WHICH PROSECUTIONS WERE BASED AND TERMINATED.

CHEESE ACT, 1897, IN VIOLATION OF

Cheese, Cream, misbranded,	1
	1

EGG ACT, 1909, IN VIOLATION OF

Eggs unfit for food,	30
in bakery,	1
	31

FOOD ACT, 1909, IN VIOLATION OF

Apples, decomposed,	2
Apricots, containing sulphur dioxide, not declared,	4
Dried, containing undeclared sulphites,	2
containing sulphur dioxide,	5
containing sulphur dioxide, not declared,	11
containing undeclared sulphites,	13
containing added sulphurous acid, not stamped,	6
containing added sulphur dioxide or compound thereof and not stated on package,	2
not stamped,	2
Beefsteak, diseased, decomposed and unwholesome,	1
Blackberries, Currants, Huckleberries, etc., filthy and contaminated,	1
Bread, Cakes, etc., exposed in such manner as to render them contaminated and unwholesome,	1
Breakfast Bacon, diseased, contaminated with worms, decomposed and unwholesome,	1
Breakfast Food, containing bugs and worms,	1
containing worms and weevils,	2
Butter, containing an excessive amount of moisture,	3
in an unwholesome and poisonous condition,	1
Cake, colored,	1
Candy, containing paraffin,	3
containing undeclared sulphites,	2
Bananas, containing sulphites,	1
Fudge, containing sulphites,	1
Marshmallows, containing sulphites,	1
Prize Boxes, containing sulphites,	1
Short Cake, containing sulphites,	1
Zig Zags, containing sulphites,	1

CASES TERMINATED—Continued

Candied Cherries, containing sulphur dioxide,	2
Fruit, containing sulphur dioxide,	2
Catsup, adulterated,	3
containing an excessive amount of benzoic acid,	2
containing an excessive amount of sodium benzoate,	17
containing saccharin,	2
Cherries, containing sulphur dioxide and benzoic acid,	1
Chestnuts, unfit for food,	1
filthy and decomposed,	1
filthy, decomposed and unwholesome,	2
Chicken, unfit for food,	1
Chocolate Balls, containing no chocolate,	1
Bon Bons, adulterated,	1
Creams Imitation, containing cornstarch and coal tar dye,	1
Lu Lu Bars Imitation, containing resinous glaze,	1
Mints, containing no chocolate and colored with a coal tar dye,	1
Cider, containing undeclared benzoic acid,	2
Sweet, containing undeclared benzoic acid,	1
Cocoanut, decayed,	2
Caramels, adulterated,	1
containing large amount of foreign starch,	1
Marshmallow Candy, containing sulphites,	1
Coffee, adulterated,	1
containing chiccory and cereal,	2
containing ground roasted peas,	1
Confectionery, adulterated,	1
Corn Meal, sour and unfit for food,	1
Syrup, Apple and Sugar Butter,	1
Cottonseed Oil as and for Olive Oil,	2
Cream Fudge, coated with a resinous glaze,	1
Cream Nuts, filthy, decomposed and unwholesome,	1
Cream Puffs, adulterated,	3
Cucumber, partly decomposed, diseased and unfit for food,	1
Duck, decomposed,	1
Eggs, as and for fresh eggs, misbranded,	3
English Walnuts, unfit for food,	1
Figs in Maraschino, containing benzoic acid,	1
Flesh, unwholesome,	1
Flour, containing added nitrous acid,	7
Food, adulterated,	1
Fruit, decayed,	1
keeping in an unwholesome and filthy condition,	3
Fudge, coated with a resinous glaze,	2
Gelatine, containing sulphites,	2
Ice Cream Cones (empty) containing boric acid,	1
India Relish, containing saccharin,	1
Jelly, adulterated,	1
Ketchup, containing an excessive amount of benzoic acid,	1
containing an excessive amount of sodium benzoate,	2
Lemon Extract, adulterated,	1
Maintaining an unsanitary store,	1

CASES TERMINATED—Continued

Maraschino Cherries, containing benzoate of soda, not declared. 1
containing sulphur dioxide or compound thereof, ... 1
Marasquin Cherries, containing sulphurous acid 1
Marshmallow Candy, containing sulphites, ... 1
Meat, contaminated by flies, ... 1
bad, ... 1
exposing in such manner as to render them contaminated and unwholesome, ... 1
tubercular, unfit for food, ... 2
unwholesome, ... 2
Mince Meat, containing benzoic acid, not declared. 1
Nuts, decayed, ... 1
filthy and decayed, ... 1
Olive Oil, adulterated, ... 1
adulterated with cottonseed oil, ... 3
Imitation, made from cottonseed oil. 1
Oranges, containing coal oil, ... 1
rotten, ... 1
Oysters, containing added water, ... 4
Peas, Canned, colored with sulphate of copper, ... 1
unfit for food, ... 1
Peaches, Dried, adulterated, ... 1
decomposed and unfit for food, ... 2
Dried, bleached with sulphur dioxide, ... 3
containing undeclared sulphur dioxide. 20
containing sulphurous acid, ... 1
undeclared sulphurous acid, ... 4
containing undeclared sulphites, ... 29
Pies, Cakes, etc., exposed in a way and manner so as to render them unfit for food, ... 1
Pork Sausage, decayed, ... 2
Potatoes, rotten, ... 1
Prunes, containing undeclared sulphites, ... 1
Raisins, containing undeclared sulphites, ... 10
Sultana, containing undeclared sulphur dioxide, ... 2
Sausage, decayed, ... 4
putrid, ... 1
Strawberry Extract, adulterated, ... 2
Tomato Catsup, adulterated, ... 3
containing benzoic acid, ... 1
containing an excessive amount of sodium benzoate, 33
made from decomposed materials, ... 3
made from decomposed materials and contained saccharin, ... 1
made from decomposed materials and contained an excessive amount of sodium benzoate, ... 3
containing saccharin, ... 6
unfit for food, ... 1

CASES TERMINATED—Continued

Vanilla Extract, adulterated,	1
Veal, bad,	2
	328

FRUIT SYRUP ACT, 1905, IN VIOLATION OF

Strawberry Syrup, containing saccharin,	15
	15

ICE CREAM ACT, 1909, IN VIOLATION OF

Ice Cream, below standard,	9
low in fat,	5
Caramel, low in fat,	1
Chocolate, below standard,	1
low in fat,	9
Strawberry, low in fat,	2
Vanilla, below standard,	7
low in fat,	14
	48

LARD ACT, 1909, IN VIOLATION OF

Lard, adulterated,	2
containing beef stearin,	1
composed largely of cottonseed oil and beef fat,	2
compound, and not branded according to law,	1
	6

MEAT ACT, 1905, IN VIOLATION OF

Hamburg Steak, containing sulphurous acid,	3
containing sulphites,	1
	4

MILK ACT, 1901, IN VIOLATION OF

Milk, preserved with formaldehyde,	5
containing boracic acid,	1
	6

MILK ACT, 1911, IN VIOLATION OF

Cream, low in fat,	88
Milk, low in fat,	46
low in fat and partially skimmed,	11
low in fat and skimmed,	19
low in fat, skimmed and watered,	3
low in fat and watered,	28
low in solids,	1
low in solids and watered,	5
low in fat and solids,	71
low in fat and solids, skimmed,	49
low in fat and solids, watered,	12

CASES TERMINATED—Continued

skimmed,	22
watered,	25
watered and skimmed,	1
Skimmed Milk, watered,	1
	382

NON-ALCOHOLIC DRINK ACT, 1909, IN VIOLATION OF

Birch Beer, containing saccharin,	9
Birch Pop, containing saccharin,	1
Cream Soda, containing saccharin,	1
Dog Head Fruit Cidera's, containing no fruit; containing benzoic acid, coal tar color and six per cent. alcohol,	1
Ginger Ale, containing undeclared added capsicum,	1
Imitation Real Chocolate,	1
Strawberry Soda,	1
Lemon Pop, containing saccharin,	2
Marrow Food, containing saccharin,	1
Orange Cider, containing saccharin,	1
Pop, containing saccharin,	1
Pop artificially colored and flavored,	1
Phosphate, containing saccharin,	1
Pop, containing saccharin,	3
Raspberry Pop, containing saccharin,	1
Red Pop, containing saccharin,	1
Root Beer, containing saccharin,	3
Sarsaparilla, containing saccharin,	1
Soda, containing saccharin,	19
Soft Drinks, adulterated,	1
containing saccharin,	5
misbranded,	6
Strawberry Pop, artificially colored,	1
artificially colored and flavored,	3
containing no strawberry and containing saccharin,	2
containing saccharin,	4
misbranded,	2
Soda, containing saccharin,	26
Sweet Cider, containing alcohol,	1
Temperance Brew, adulterated,	2
White Pop, containing saccharin,	1
	104

OLEOMARGARINE ACT, 1901, IN VIOLATION OF

Oleomargarine, colored in imitation of yellow butter,	25
without a license,	19
as and for butter and no license,	7
for butter with meals,	1
for butter with meals and no license,	4
for butter with meals and no license and no signs,	2
	58

CASES TERMINATED—Continued

RENOVATED BUTTER ACT, 1901, IN VIOLATION OF

Renovated Butter, not marked and no license,	1
	1

SAUSAGE ACT, 1911, IN VIOLATION OF

Beef Bologna, containing vegetable flour,	2
Bologna Sausage, colored and containing cereals and added water,	4
containing vegetable flour,	2
Frankfurter Sausage, containing vegetable flour,	1
German Style Sausage, containing vegetable flour and added water,	1
Hamburg Steak, containing sulphites,	1
Luncheon Sausage, containing vegetable flour and added water,	1
Polish Sausage, containing vegetable flour,	3
Pork Sausage, containing sulphurous acid,	1
Sausage, adulterated,	1
containing vegetable flour,	1
containing vegetable flour and added water,	1
Canned, containing added cereal,	1
Smoked, containing vegetable flour and added water,	1
Vienna Style Sausage, containing vegetable flour and added water,	6
	27

VINEGAR ACT, 1901, IN VIOLATION OF

Apple Vinegar, not made wholly from apples and containing added water,	1
Cider Vinegar, adulterated,	15
containing added water,	9
a distilled vinegar, colored,	1
Imitation,	1
Distilled Vinegar, below standard,	1
for pure cider vinegar,	6
colored,	1
Vinegar, containing added water,	3
	38
Grand total,	1049

FINANCIAL STATEMENT

RECEIPTS AND EXPENDITURES OF THE DAIRY AND FOOD BUREAU FOR THE YEAR 1912.

RECEIPTS

Covering oleomargarine license fees, renovated butter license fees, pure food, milk, renovated butter, vinegar, oleomargarine, cheese, egg, meat, non-alcoholic drink, sausage, ice cream, lard and fruit syrup fines,	$136,125 49

EXPENDITURES

Covering special agents' salaries and expenses, chemists and laboratory salaries and expenses, attorneys, detectives and assistants' salaries, fees and expenses, and clerical and stenographers' salaries, ... $82,049 65

IN THE SUPERIOR COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania
vs.
Harris A. Clewell.

No. 145 October Term 1911. Appeal by defendant from the judgment of the Court of Quarter Sessions of Northampton County.

Filed March 1, 1912.
Henderson, J.

The defendant was convicted on an indictment charging him with selling oleomargarine which was not "made and kept free from all coloration and ingredients causing it to look like yellow butter" in violation of the Act of May 29, 1901, P. L. 327. The question involved is thus stated: "Whether the Act of Assembly of 1901, May 29, P. L. 327, Section 1, prohibiting the sale, manufacture, etc., of oleomargarine 'which shall be in imitation of yellow butter produced from pure, unadulterated milk or cream of the same, with or without coloring matter,' means any shade or tint of yellow, and not what is commercially known as yellow butter. In other words is yellow butter in the Act synonymous with any shade of butter yellow? In the argument of the appellants counsel the statement is made that the only issue is, whether the oleomargarine sold by the defendant contained coloring matter or ingredients causing it to look like yellow butter produced from pure, unadulterated milk, or cream of the same, with or without coloring matter. The position taken by the appellant is "that the yellow butter named in the Act has reference to a certain standard of yellow butter which is the natural butter made in the month of June and which assumes a rich yellow color, but that natural butter made at any other time of the year falls below this standard of color." It is also contended that butter made at other times in the year than the month of June is generally artificially colored to resemble butter made in the month of June and that, therefore, butter so colored becomes a standard of the yellow butter to which the Act of Assembly refers and that the defendant should have been permitted to offer in evidence a sample of artificially colored butter for the purpose of showing that the oleomargarine which he sold was not of that color. The issue thus presented is within narrow compass. The position of the defendant asks us to declare that when the Legislature speaks of "yellow butter" it means butter having the color of that product made in the month of June, but we are unable to find either in the words of the Statute or from a consideration of the reasons leading to its enactment any warrant for such construction. As has been repeatedly stated the principal object of the Act was to prevent deception by dealers in oleomargarine and it would be a remarkable inference that care was only exercised toward the safeguarding of the public against imposition as to butter made during one-twelfth of the year. Witnesses are not necessary to show that butter is not all of the same color

whether made in the month of June or at any other time. Different shades of yellow appear in its production contingent on the breed of cows, the feed used, the time of year in which it is made and the process of manufacture, and when the phrase "yellow butter" is used we think the Legislature intended to describe the general color inhering in that product. Any other construction would open every market to the sale of oleomargarine made in imitation of butter and no prohibition would exist except as to the imitation of the highest natural color of butter or of butter colored in imitation of it. This would defeat the very purpose of the Act. It is our duty to give it a reasonable construction and to enforce it according to its spirit as well as its letter. If we should hold that the words "yellow butter" are equivalent to "commercial butter" as contended for by the appellant we would be deciding that the law forbids the sale of oleomargarine not made and kept free from all coloration or ingredients causing it to look like butter having the highest natural color of yellow or butter artificially colored in imitation of such highest natural color. This would be equivalent to re-enacting the statute and giving it an application and limitation which could not have been in legislative contemplation. The whole history of the legislation on this subject shows that what was aimed at is the prevention of fraud on the consumers by the sale to them of another substance as and for butter. It was recognized that oleomargarine when not artificially colored has a white or very light shade and that some butter because of the use of excessive heat in the making or some other cause might also be white or very light and that to make white butter a standard would be a practical prohibition of the manufacture of oleomorgarine at all. Hence, the qualifying word "yellow." But there was no attempt to fix an absolute shade of yellow nor intention to permit an imitation of all shades of butter except that which was colored to the highest degree of yellow which butter in its natural condition ever possesses. It was unimportant, therefore, to know what was recognized in the trade in New York or elsewhere as "yellow butter." It may be as stated by the learned counsel for the appellant that this is butter colored to imitate June butter and that the public taste at the large centers of trade demands this color, but a large part of the butter produced in the Commonwealth is consumed in the localities in which it is produced and is sold from farms and creameries to local customers. These consumers were within the view of the Legislature as well as dwellers in the largest cities and are entitled to the same protection. The yellow butter to which the Act refers is not that sold in New York or Philadelphia alone but that which is produced on the farms and in the factories as well and is sold in its natural color or with the addition of coloring matter to increase its yellowness. The offer of artificially colored butter to establish a standard of color would not have helped the defendant for the prohibition is against the imitation of yellow butter whether it be colored or not. If the Commonwealth could show that the oleomargarine sold was in imitation of yellow butter produced from pure unadulterated milk and cream without coloring matter the case would be made out and it was of no consequence that it was not like some sample of colored butter which the defendant proposed to bring into the case. As there was evidence clear and direct that the oleomargarine in question contained cottonseed oil and butter fat and in the opinion of the expert chemist palm-oil also, and that it possessed a distinct yellow butter color the case was necessarily one for the jury. The subject of the ninth assignment is a portion of the charge and contains instruction to the jury that the samples of oleomargarine and butter were to be sent out for the purpose of applying the testimony of the witnesses to the exhibits in the case and the Court said to the jury that they ought not to substitute their own judgment irrespective of what the witnesses said or their own comparisons

of the samples for the sworn testimony which they had in the case. This part of the charge immediately followed a reference by the Court to exhibits numbers one, nine, and ten and the testimony of a chemist called by the defense who analyzed exhibits nine and ten and testified that they were pure butter containing no coloring matter. The instruction to the jury was not inappropriate therefore, as they were not experts competent to determine the composition of the exhibits nor to say whether they were oleomargarine or butter unaided by the testimony of the witnesses. The instruction was not harmful to the defendant.

The offer to introduce a sample of what was alleged to be yellow butter for the purpose of establishing a standard of comparison without offering to show that the proposed standard was in fact butter was clearly inadmissible and properly rejected by the Court. The offer to introduce a sample of artificially colored oleomargarine was irrelevant. There are doubtless various shades of color in oleomargarine. The jury would get no information from the sample offered which would be of benefit to them in determining whether the article sold by the defendant was like yellow butter. The Court permitted the defendant to offer butter produced from pure unadulterated milk and cream, and exhibit number nine which was shown to be uncolored June butter was put in evidence. Testimony was also admitted to show that the defendant's oleomargarine resembled white butter, and the issue was squarely made as to its likeness to yellow butter. Unless therefore the defendant can maintain his position that he may sell oleomargarine of all shades of butter color except the deepest shade of yellow exhibited in June butter he has no defense and this in our view of the statute is not a maintainable position.

The assignments of error are all over-ruled, the judgment is affirmed and the record remitted to the Court below to the end that the sentence be carried into execution.

State of Pennsylvania,
Philadelphia County.

I, Alfred B. Allen, Deputy Prothonotary of the Superior Court of Pennsylvania, do hereby certify that the above and foregoing is a true copy of the Opinion in the above entitled cause, so full and entire as appears of Record in said Court.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Philadelphia, this 7th day of March, A. D. 1912.

SEAL.

ALFRED B. ALLEN,
Deputy Prothonotary.

IN THE SUPERIOR COURT OF PENNSYLVANIA

The Commonwealth of Pennsylvania
vs.
Alexander T. Ignatavig.

No. 136 October Term 1911. Appeal by defendant from the judgment of the Court of Quarter Sessions of Schuylkill County.

Filed March 1, 1912.
Henderson, J.

The charge against the defendant was that he sold oleomargarine which was not made and kept free from all coloration or ingredients causing it to look like yellow butter, in violation of the Act of May 29, 1901, P. L. 327. The fact of the sale was not denied, but the defendant contends that evidence was improperly introduced and that the statute was not correctly interpreted by the trial judge in the charge to the jury. The Commonwealth offered as exhibits packages of oleomargarine alleged to have the color of yellow butter bought from the defendant and a package shown to have the natural color of oleomargarine. All of these samples were analyzed by a chemist in the service of the Pure Food Division of the Department of Agriculture, and were admitted as exhibits in the case to show the color of the product sold by the defendant and the color of oleomargarine as it might be and was made without coloration or ingredients causing it to look like yellow butter. A sample of butter was offered to show the color of butter made from the cream of cows without the addition of any substance to affect its color. Objection was made to the introduction of the package of white oleomargarine because the question was not then raised whether oleomargarine could be made without some likeness in color to butter and to the sample of butter offered because it was made in the spring when the color of butter is light and the sample was not therefore, a correct exhibit of the butter referred to in the Act of Assembly which the defendant contended was "June Butter" or "Commercial Butter." The first eight assignments of error relate to these samples and may be considered together. The sale of the oleomargarine being admitted the question for the consideration of the jury was whether the thing sold looked like yellow butter and while it was not necessary for the Commonwealth at that stage of the proceedings to show that oleomargarine was manufactured which did not have this likeness it was not erroneous to permit proof of that fact when offered by the Commonwealth in anticipation of testimony tending to show that a yellow color was an essential quality of oleomargarine. At a later stage of the trial the defendant offered evidence to show that a yellow tint was inseparable from that product when manufactured from the constituents essential to its production, and the relevancy of evidence as to this sample was thus established. We do not wish to be understood as deciding that a successful defense could be maintained on proof that oleomargarine is necessarily yellow, but that was one of the facts alleged and evidence was offered by the defense to that effect and this the Commonwealth might rebut. The sample was also admissible for the purpose of comparison by the jury between it and the packages bought from the defendant, one of which was shown to con-

tain some butter and the other cottonseed oil, the presence of which would account, in part at least, for the color exhibited by the specimens. The offer of the package of butter was allowed to bring before the jury evidence of the natural color of butter and this evidence we regard as clearly admissible, if evidence were at all necessary to inform a jury of average intelligence what yellow butter looks like. The offer of the defendant to prove that a sample of butter obtained from Gimbel Brothers in Philadelphia was yellow butter was properly rejected. There was no offer to prove nor pretence that it was the natural product of cream and the jury would receive no light from the examination of such an exhibit. The yellow butter to which the Act applies is butter made from the milk of cows and the imitation prohibited is likeness to that product. It was not sufficient to show that the article was regarded by the witness as yellow butter and whether made from milk and whether artificially colored or not was not offered to be shown. One of the principal objects of the statute as was stated by President Judge Rice in Com. *v.* Mellet, 27 Pa. Super. Ct. 50, was "to prevent the sale of oleomargarine, which, by reason of the addition of coloring matter, or of the selection or treatment or combination of its component parts, is made to resemble and be in imitation of yellow butter." It was not the purpose to fix as a standard butter highly colored artificially nor something which may not have been in fact pure butter. The 14th, 15th, 16th and 17th assignments relate to evidence bearing on the meaning of the words "yellow butter" and the effort of the defendant to show what was known in the market as "yellow butter." The only market referred to was the Philadelphia market and the proposal was to show what the color "yellow" is as applied to commercial butter. These offers were overruled by the Court for the reason that the Act has reference to the color of butter that is made exclusively from milk or cream without the addition of any ingredient to give it any other color than its natural color—the color derived from the ingredients used to make what is known as unadulterated butter. Opportunity was given to prove the color of butter made at the time of trial or at any other time of year but the defense was limited to the natural color, not that produced by the addition of some ingredient for the purpose of producing color. In so ruling the Court was obviously in harmony with the spirit and purpose of the statute. It is within the power of the Legislature to wholly prohibit the sale of oleomargarine as was done by the Act of 1885 and if to prohibit, certainly to regulate. It may be that the regulation referred to embarrassed manufacturers of and dealers in this class of goods, but that is a legislative consideration. It was evidently the belief of the law-making body that this provision and others incorporated into the statute were necessary to prevent deception and it is not for the Court to hold that this was a mistaken conception. Evidence was in the case that natural butter has a color known as "butter yellow" and that it is yellow all the year around; that depth of color varies somewhat but that in the ordinary processes of manufacture it has a distinctive yellow color, and this is what the defendant's oleomargarine imitated. The Court submitted the case with instructions as favorable to the defendant as the facts would permit. Attention was called to the evidence that butter in May, June and July has a distinct yellow color known as yellow butter and that this is the color that the Legislature intended that oleomargarine should not possess—that is, the color of yellow butter. This we think limited the Commonwealth to proof of a higher degree of color than is required by the statute and to that extent was favorable to the defendant. We have considered the words "yellow butter" as used in the statute in Com. *v.* Clewell, decided at this term, and what was there said need not be now repeated. Our conclusion was that the prohibition of the statute applied to all

butter made wholly from the milk of cows by the ordinary processes of manufacture having a yellow color although that color might vary in degree and whether the natural color or a color artificially produced in imitation of the natural color. The jurors saw the oleomargarine which the defendant sold; they saw a sample of white oleomargarine; they heard the testimony of one of the defendant's witnesses from whom he purchased the oleomargarine and they saw a sample of pure butter made about the time of the trial. They brought into exercise their own sense, as well, and on the evidence convicted the defendant

We do not find any reversible error in the proceeding and therefore affirm the judgment and remit the record to the Court below to the end that the sentence may be carried into effect.

COMMONWEALTH *VS.* IGNATAVIG

State of Pennsylvania,
Philadelphia County.

I, Alfred B. Allen, Deputy Prothonotary of the Superior Court of Pennsylvania, do hereby certify that the above and foregoing is a true copy of the Opinion in the above entitled cause, so full and entire as appears of Record in said Court.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Philadelphia, this 7th day of March, A. D. 1912.

SEAL.

ALFRED B. ALLEN,
Deputy Prothonotary.

COMMONWEALTH *V.* PFLAUM, APPELLANT.

Constitutional law—Title of act—Classification—Discrimination—Food law—Confectionery—Act of May 13, 1909, P. L. 520.

1. The Act of May 13, 1909, P. L. 520, entitled "An act relating to food; defining food; providing for the protection of the public health," etc., is sufficiently comprehensive in the title to give notice of a prohibition against adding sulphur dioxide to confectionery, inasmuch as confectionery is a food.

2. The fact that the act provides that in the preparation of dried fruits and molasses, sulphur dioxide may be used in quantities not detrimental to health, does not render the act unconstitutional as violating Art. 3, Sec. 7, of the Constitution; nor is the act open to the objection of wrongful classification and discrimination because it relieves retail dealers from prosecution, where they sell under a guaranty signed by the manufacturer or a wholesale dealer.

3. A person may be convicted under the Act of 1909 of selling confectionery to which sulphur dioxide has been added, where it appears that the sulphur dioxide was added to gelatine in the bleaching process, and that the gelatine was then added to other constituents to compose the confectionery which the defendant sold.

Argued April 8, 1912, Appeal No. 148, Jan. T., 1912, by defendant, from judgment of Superior Court, Oct. T., 1911, No. 218, reversing judgment of Q. S. Phila. Co., March T., 1911, No. 747, arresting judgment on verdict of guilty in case of Commonwealth *v.* Christian Pflaum, Jr. Before Fell, C. J., Brown, Mestrezat, Stewart and Moschzisker, JJ. Affirmed.

Appeal from judgment of Superior Court.

Henderson, J., filed the following opinion:

The defendant was convicted on the first and second counts of an indictment which charged him with selling confectionery which contained sulphur dioxide, in violation of the Act of May 13, 1909, P. L. 520. This act is entitled "An Act relating to food; defining food; providing for the protection of the public health and the prevention of fraud and deception by prohibiting the manufacture or sale, the offering for sale or exposing for sale, or the having in possession with intent to sell of adulterated, misbranded or deleterious foods; prescribing certain duties for the Dairy and Food Commissioner in reference thereto; and providing penalties for the violation thereof." The indictment was drawn under the fifth paragraph of the third section of the act, which declares that any article of food shall be deemed to be adulterated: "FIFTH. If it contains any added sulphurous acid, sulphur dioxide or sulphites, benzoate acid or benzoates except as hereafter provided; or if it contains boric acid or borates, salicylic acid or salicylates, formaldehyde, hydrofluoric acid or fluorides, fluoborates, fluosilicates or other fluorine compounds, dulcin, glucin, saccharin, alum, compounds of copper, betanapthol, hydronapthol, abrastol, asaprol, oxides of nitrogen, nitrous acid or nitrates, pyroligenous acid, or other added ingredients deleterious to health; or if, in the case of confectionery, it contains any of the substances mentioned in this paragraph, or any mineral substance, or injurious color or flavor, alcoholic liquor, or any other ingredient, not herein mentioned, deleterious to health: — — — — — And provided further that in the preparation of dried fruits and molasses, sulphur dioxide, either free or in simple combination may be used in such quantities as will not render said dried fruits or molasses deleterious to health." On motion of the defendant the learned Judge of the Quarter Sessions arrested the judgment for the reason that the evidence did not show that sulphur dioxide had been "added" to the confections sold by the defendant, and from the opinion filed the learned judge seems to have entertained the view that the act was unconstitutional as applied to confectionery which did not contain "added" dioxide of sulphur or other adulterant. The first objection raised by the defendant was that the title to the act is defective in that confectionery is not specified as one of the subjects legislated about. This implies that confectionery is not food, and such is the contention of the appellee. The act not only relates to food, but the title indicates that the intention was to define what food is. That the Legislature may define the terms it uses and the meaning which it attaches to words cannot be doubted. Where the meaning given in the act is not that which attaches to them in the common understanding the title of an act should express any exceptional meaning with sufficient clearness to excite inquiry as to the provisions of the act, and this was evidently in the legislative mind when the title to the act was framed. Notice is given in the title of the intention to define the term "food." The title to the act to which Com. v. Kebort, 212 Pa. 289, related was different in form, and contained no notice of the definition of the term "food" set forth in the body of the statute. That case is not an authority, therefore, in support of the appellee's position, even if a definition of the word were necessary as applied to candy and other confectionery. It was held in Com. *v.* Kebort, that the term

"food" did not include drink; that there was a generic distinction which had been recognized in the thought and speech of the race from time immemorial, and that the word "food" did not include in the popular understanding drink also, and that, therefore, liquors were not included in the prohibitions of the Act of June 26, 1895, P. L. 317. That the word "food" is a very general term, and applies to all that is eaten for the nourishment of the body cannot be questioned. It is so understood generally, and the authorities whose accuracy is relied upon in all departments of investigation concur in that definition. "Nutritive material absorbed or taken into the body for the purpose of growth or repair, or for the maintenance of the vital processes."—Webster. "That which is eaten or drunk for nourishment, aliment; nutriment, in the scientific sense. Any substance that, being taken into the body of an animal or plant, serves, through organic action, to build up normal structure or supply the waste of tissue; nutriment."—Standard Dictionary. "Whatever supplies nourishment to organic bodies; aliment; victuals, provisions."—Century Dictionary. "It seems not a debatable question whether confections are within these definitions. No one could contend that sugar and honey are not food, or that preserved fruits and chocolate are not nutriment, and these constitute the great bulk of the confectionery manufactured and sold. The enormous consumption of the materials which enter into the composition of confectionery and the value which they have in the economy of nutrition are so well known that it is not necessary to enter into a discussion of their scientific value, nor the relation they bear to the food supply of the human race. That the term "food" includes candy, sweetmeats, preserves and other confectionery, accords with the opinions of lexicographers, chemists, and the public understanding, but if this were not so, as the Legislature might include confections in the catalogue of foods, and has so done in this case, and has given notice in the title of the act that it contained a definition of the things to which the statute applied, all interested are put on inquiry as to matters therein contained, and a title which leads to inquiry is sufficient in this respect. We need not refer to the numerous cases which hold that it is not necessary that all the distinct provisions of a statute be set forth in the title, and that it is sufficient if that give notice of the subject of the act so as reasonably to lead to an inquiry as to what is contained in the body of the bill. Whatever the subject of a title reasonably suggests as appropriate to the accomplishment of the object declared is sufficiently indicated by such title. "Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger": Sinking Fund Cases, 99 U. S. 700; Powell *v.* Penna., 127 U. S. 678 (8 Superior Ct. Repr. 992, 1257); Sugar Notch Boro., 192 Pa. 349.

The statute under consideration is a police regulation. It has to do with the public health, which is one of the chief objects of government and a proper subject of legislative control. The power of the Legislature to promote the general welfare is extensive, and it may exercise a large discretion in determining how that power shall be employed. What the interests of the public require and what measures are necessary to protect them are subjects for the exercise of this discretion. Whether in a given instance the manufacture and sale of an article intended for human consumption is deleterious to health, and whether the public welfare demands that such business be prohibited, are questions of fact and policy exclusively for the determination of the Legislature. It is an elementary proposition that all property in this State is held under the implied obligation that the owner shall not use it to the injury of

the community. The Legislature has declared that sulphur dioxide is deleterious to health, and has forbidden its use in the manufacture of confectionery. We must assume that this determination was reached after full examination and on reasonable grounds, and that in the judgment of a body having control of the subject, such prohibition was necessary to promote the public health.

It is contended, however, that the statute discriminates as to all other food except confectionery and in favor of dried fruits and molasses and that it violates the 7th Section, of Article 3, of the Constitution of Pennsylvania for that reason. Whether these distinctions have been incorporated in the statute was a legislative question. It was clearly within the power of the Legislature to prohibit the use of sulphur dioxide or any other poison in all of the articles entering into the food supply of the citizens of the Commonwealth and under the same power it might limit the prohibition to one class of food and not to another: Crowley *v.* Christensen, 137 U. S. 86 (11 Superior Ct. Repr. 13); Davis *v.* Mass., 167 U. S. 43 (17 Superior Ct. Repr. 731). It is not necessary in the exercise of the police power that legislation be directed against all subjects prejudicial to the public welfare. This statute might have operated only on confectionery or flour or sugar. At the same session of the Legislature separate acts were passed with reference to fresh eggs, lard, ice cream and milk and cream, and numerous other similar statutes were enacted at other sessions of the Legislature. The same discretion which permitted the enactment of a prohibitory law as to one article of food might exempt another from the prohibition. It is permissible to classify in such a case, reference being had to the character of the food, the form in which the adulterant is used and the extent to which the food is consumed. The Legislature had these considerations in mind doubtless in the case of dried fruits and molasses. We cannot declare judicially that sulphur dioxide in the limited quantities permitted in the case of these two articles would affect the public health. Certain it is that they are not used to the extent to which confectionery preparations are used. No constitutional obligation rests on the Legislature to subject every article of food to the same regulation. It is easy to conjecture reasons which may have led the Legislature to place dried fruits and molasses in the same category and it is our duty to assume that such consideration influenced that body. The fact, too, that it was provided that where sulphur dioxide in quantities not deleterious to health was used in the preparation of dried fruits and molasses notice that it had been so used must be plainly stated on each package suggests that the Legislature recognized that sales of these articles are generally made to adults or persons able to understand that notice which the package must contain, whereas a very large proportion of the confectionery made in the country is sold to children who consume it without knowledge or discretion as to its constituents. And these considerations apply as well to the objection that the presence of sulphur dioxide in confectionery is forbidden, whereas in the case of the other foods the adding of that substance is only prohibited. What the legislative thought was in making this distinction is not expressed but it is not difficult to see that it is based on substantial grounds. The evidence shows that gelatine is largely used in the manufacture of confectionery and that in the preparation of it large quantities of sulphur dioxide are used; that in much of the gelatine this chemical is not removed but remains in it when distributed by the manufacturers for consumption. This is doubtless the result of carelessness or cupidity and a condition difficult to guard against on the part of the health authorities. It is not shown that sulphur dioxide enters in any appreciable degree into the natural composition of other foods. It may have been as the result of accurate knowledge on the subject that added sulphur dioxide was prohibited in the one case and whether "added" or not, in the other.

Objection is made to the enforcement of the statute because of that part of Section five which provides:

"But no prosecution shall be sustained, under the provisions of this act, against a retail dealer for the selling, offering for sale, exposing for sale, or having in possession with intent to sell, or any adulterated or misbranded article of food as defined herein, if the retail dealer from whom the said article of food, sample, or portion thereof, was obtained by the Dairy and Food Commissioner or his agent, can establish a guaranty, signed by the manufacturer or wholesale dealer, or jobber or distributor, residing in the United States, from whom such article of food was purchased or procured, to the effect that the same is not adulterated or misbranded, within the meaning of this act designating it." This is said to be classification and discrimination. It will be observed, however, that, it is not discrimination in favor of the sale of the adulterated products. The prohibition of them is general. It applies to all classes of dealers and declares the use of the poisonous ingredient to be unlawful. The reason for this exemption from prosecution is apparent. The transactions of manufacturers and wholesale dealers are with large quantities and they have an opportunity to know the composition of their merchandise. The retail dealer who buys his stock in small quantities is in a very different situation. He has neither knowledge nor means of knowledge of the ingredients composing the article which he buys. He must rely in the first instance on the honesty of the wholesale dealer. Where he has a guaranty from such dealer as to the purity of the goods purchased there is a reason for protecting him from the penalty of a sale without notice of the character of the commodity. The classification between wholesale and retail dealers is a very obvious one and has been sustained in numerous cases. The Act of April 22, 1846, P. L. 486, relating to tax on dealers in merchandise distinguished between those who sold goods of their own manufacture at their manufactories and those who sold other wares than those of their own manufacture. This Act was considered in Norris *v.* Com., 27 Pa. 494. The Act of May 2, 1899, P. L. 184, classified dealers into four classes and it was sustained in Knisely v. Cotteral, 196 Pa., 614, where the Court said: "The division of vendors into wholesale and retail is perhaps the most obvious and familiar that could be made." "Classification is a legislative question subject to judicial revision only so far as to see that it is founded on real distinctions in the subjects classified, and not on artificial or irrelevant ones:" Seabolt *v.* Commissioners, 187 Pa. 318. This case involved the construction of the Act of May 6, 1897, P. L. 46, classifying public bridges. The classification of telegraph companies was held valid in Western Union Tel Co. *v.* Milling Co., 218 U. S. 406. Distinction between jobbers and wholesale dealers in cigarettes and between wholesale and retail dealers in leaf tobacco and liquors was sustained in Cook *v.* Marshall Co., 196 U. S. 261 (25 Sup. Ct. Repr. 233). The same principle was applied in S. W. Oil Co. *v.* Texas, 217 U. S. 114 (30 Sup. Ct. Repr. 496), under a statute which provided for penalties for violation thereof. There is substantial ground, therefore, for the distinction made between wholesale and retail dealers as to the imposition of the penalty provided by the statute.

The fact is not to be overlooked, however, that the defendant is a wholesale dealer and as to that class of merchandise the act is complete. The exception as to dried fruits and molasses and the exemption of retail dealers who sold ignorantly on a guaranty did not affect him. The broad terms of the act declare it to be unlawful to sell confectionery containing the prohibited adulteration. The Legislature having power as we have seen to enact this prohibition the defendant is not relieved by the consideration that some

other article of merchandise is not in the same class or that retail dealers who sell on the representation of the wholesale dealer as to the purity of the goods are not to be visited with the penalties of the act for the first offense. The exceptions referred to are not of such import that without them the other sections of the act would cause results not contemplated or declared by the Legislature: New York, ex rel. Hatch *v.* Reardon, 204 U. S. 152 (27 Sup. Ct. Repr. 188); Connolly *v.* Sewer Pipe Co., 184 U. S. 540 (22 Sup. Ct. Repr. 431). As affecting this case it is not important whether the sulphur dioxide was "added" to the candy as a separate constituent or was there because it was in one of the ingredients entering into the composition of the confectionery for under the first count of the indictment, as we have seen, a sale of the merchandise containing this ingredient is prohibited whether it be separately added or not and the conviction could be sustained on that count. We think that the evidence warranted the submission of the case to the jury on the second count. It shows that sulphur dioxide is not a natural content of any of the materials used in the manufacture of the confectionery. There was evidence, however, that traces of sulphur dioxide may appear in some natural food products because of sulphur existing therein which may account for such traces. This could be considered as having a natural origin and if it existed would not be "added" within the meaning of the Act. It may be that minute quantities of other prohibited substances are naturally developed in other foods but this is not the condition to which the statute has reference. The purpose is clear. No one is permited to take sulphur dioxide and add it to a completed product or to put it into one constituent of a product and in combination with others make an article of food, with the exception of dried fruits and molasses. It is not disputed that sulphur dioxide may be combined with gelatine in the bleaching process and that is shown to be the manner in which it found its way into the goods of the defendant. It was added to the gelatine and the gelatine was combined with sugar and other constituents to compose the candy which the defendant sold. It would be too narrow a consideration of the act to hold that a prohibited element introduced into a manufactured product in the manner described by the Commonwealth's witness was not added. It is not necessary for the Commonwealth to show that the defendant knew that his merchandise contained the prohibited substance: Com. *v.* Farren, 91 Mass. 489; Powell *v.* Com., 114 Pa. 265. It may be as contended by the learned counsel for the appellee that the law bears heavily on a person so situated but that is a result of the exercise of the police power in very many instances. From the necessity of the case special burdens are often borne for the general benefit. Regulations promoting the public welfare may press with greater weight on one than upon another but the purpose is not to impose unequal or unnecessary restrictions upon one but to promote the general good: Barbier *v.* Connolly, 113 U. S. 27 (5 Sup. Ct. Repr. 357); Fischer *v.* St. Louis, 194 U. S. 361 (24 Sup. Ct. Repr. 673). It is not a relevant matter that in the opinion of the defendant or his witnesses the confections which he sold were wholesome and not deleterious to health. The quality of the particular merchandise does not affect the constitutionality of the act. Its object is the promotion of the public health by the method deemed best by the Legislature. To decide that because some of the products affected by the statute were wholesome the law could not be enforced would undermine the police power of the State and overthrow every statute the wisdom of which would not bear judicial scrutiny: Powell *v.* Com., 114 Pa. 265; Powell *v.* Penn., 127 U. S. 678 (8 Sup. Ct. Repr. 992, 1257). No one pretends that sulphur dioxide is necessary or desirable in confectionery. The most that can be said is that in very small quantities it is not shown to be prejudicial. No one

has a natural or a constitutional right to put poison in confectionery or other foods and the beneficial object of the statute under consideration ought not to be defeated except by clearly convincing reasons.

We are not persuaded that any of the objections presented are sufficient to justify the conclusion that the act is unconstitutional.

The judgment is reversed and the record remitted to the Court below to the end that sentence be imposed on the verdict in accordance with the law.

Error assigned was the judgment of the Superior Court.

Frank P. Prichard, with him Thomas E. Lannen, for appellant.

Wm. M. Hargest, Assistant Deputy Attorney General, with him Samuel B. Rotan, District Attorney, and E. C. Rhoades and John C. Bell, Attorney General, for appellee.

PER CURIAM, APRIL 29, 1912:

In the opinion of a majority of this court the judgment appealed from should be affirmed for the reasons stated in the opinion of the Superior Court.

Judgment affirmed.

THE TURNING OVER OF SAMPLES

An important opinion of Bell, J., Blair county, in the case Commonwealth *vs.* J. A. Koller, *et al,* in re. rule to show cause why portions of samples taken by the Commonwealth should not be turned over to defendants for analysis.

IN THE COURT OF QUARTER SESSIONS OF BLAIR COUNTY

Commonwealth
vs.
J. A. Koller et al.
October Sessions, 1904.

In re. rule to show cause why Commonwealth should not place in the hands of defendants a portion of sample for analysis by defendants, and for a bill of particulars.

Argument of Mr. Woodward, counsel for Commonwealth.

I think it will be conceded that the proposition as made on the part of the defense in this case is entirely novel. I listened with a great deal of interest to the argument on the part of defendant to discover any precedent for an application of this kind, and fail to find that counsel, with all his diligence, has produced any authorities to justify them in making such an order. This application is two fold; but the two different features are very closely related. In the first place it is that the Commonwealth be compelled by the court to

place in the hands of the defendant here, charged with a crime, the evidence now in the possession of the Commonwealth, and to place in their hands the samples of food products which have been taken, and which are supposed to be in the possession of the Commonwealth, whether they are or not does not appear in the case. A bill of particulars is the second application. We have to say in reference to the bill of particulars that the application is entirely novel in this respect; a bill of particulars in Pennsylvania, under our criminal law, can never be required in advance of an indictment. The indictment is the bill of particulars. By reason of the generality of the informations, and that arises by reason of the fact that informations are very frequently drawn by persons unskilled, the law requires before any man shall be placed on trial that there shall be a specification of the matter set forth in the form of an indictment which is in itself a bill of particulars. Now it is a little novel in advance of an indictment that defendant could come into court merely on an information that he had been arrested, and there was no issue before the court, and ask for a bill of particulars. The indictment corresponds with the declaration in a civil suit, and until an indictment is found, just as in a civil suit until declaration is filed, defendant is not in jeopardy and cannot be called upon to plead, and can at that time object to the information, unless the information upon its face fails to disclose a crime. All that is necessary is to show that a crime has been committed. There is no allegation in this case that the indictment is not in the usual form, or that it does not specify any crime to have been committed, or does not come within the act of Assembly as well as within our precedents in reference to form of indictments. Nor is there any reason that by reasons of generality that the defendant is liable to be surprised by reason of the evidence of the Commonwealth.

We come to the second proposition: that the Commonwealth be compelled to furnish a sample, or portion of the sample in their possession, that a part of the evidence, the property of the Commonwealth, be placed in the hands of men here charged with a crime. We say this is an unheard of proposition in Pennsylvania. A parallel case would be if they would come in in a criminal court and ask the Commonwealth to furnish the defendant with a list of her witnesses, with the right to examine these witnesses before the court, or to specify in advance of the trial of the case exactly what evidence was to be produced. We say in the first place that a bill of particulars such as this would be is not a matter of right; it is a question that appeals to the discretion of the court entirely, and it will only be granted in such cases where defendants' rights are liable to be jeopardized by reason of the generality of the charge, that they shall furnish specifications in relation to this crime. They are not entitled to it in Pennsylvania, and there is no decision that will give them that kind of authority. We have some decisions on the general proposition. The first on the question of bill of particulars is Commonwealth *v.* Powell, 23 Sup. Ct. 370, &c., (reading same). I refer to the case of Commonwealth *v.* Buccieri, 153 Pa. 535 (and reads from same). We also refer to the case of Commonwealth *v.* Applegate, 1 District Reports 127 (reciting facts, &c.).

We had an application somewhat similar to this in Centre County for a bill of particulars, and upon this same question it was refused in an opinion which I have here.

Counsel has cited a case here from the civil courts in reference to the examination of people who are alleged to have suffered from some accident, and cites that as a parallel case. That is not a parallel case for this reason: while the court may in the exercise of its discretion compel the plaintiff seek-

ing damages after an accident that may occur to him, while he may compel the defendant in court, and in the presence of the other side, with their expert witnesses present, that is the only rule I know of adopted in the Commonwealth of Pennsylvania, to submit himself to an examination; yet I think he will not find a case in which the plaintiff is compelled in advance of court, out of court, and away from his own parties and his own physician to submit himself to an examination. Now this application is not made to compel the examination in the presence of the experts on one side and the other, but the application is that the defendant is to have this sample handed over wholesale to the defendant, and we say this is without merit, and the Commonwealth is not bound to do it.

IN THE COURT OF QUARTER SESSIONS OF BLAIR COUNTY

Commonwealth
vs.
J. A. Koller, et al.

In re. rule to show cause why portions of samples taken by the Commonwealth should not be turned over to defendants for analysis.

BY THE COURT: "So far as the rule for a bill of particulars is concerned, as ruled by the Supreme Court in Commonwealth *vs.* Powell, 23 Sup. Ct. 372, a bill of particulars in a criminal case is not a matter of right, but is only an appeal to the sound discretion of the Court. My recollection is, that in some of the pure food indictments in cases tried in this court there was simply an allegation in the indictment that the Pure Food Act had been violated, without specifying the particular violation. I am inclined to think that that indictment was perfectly good. We have our Act of Assembly which provides that an indictment shall be deemed sufficient which simply follows the words of the Act of Assembly, and if this indictment had simply followed the words of the Act of Assembly, and been in the general form with which we found other indictments we would feel it but right and proper that the Commonwealth should specify the particular article of food which was supposed to be adulterated, and at least specify in a general way how that particular article of food was adulterated; but in the present instance the particular article of food is specified, to-wit: CHOCOLATE, and there is a general statement as to how it is adulterated. I think we will all agree on a moment's reflection that the rulings of the appellate courts on this subject are perfectly right and proper. The authority cited by Mr. Baldridge is not an analogous authority at all. In the first place, as stated by Mr. Woodward, the physical examination to which the plaintiff is compelled to subject himself is always made—and I am speaking only as to the orders of—is always in the presence of the physician of the plaintiff. I have drawn frequent orders compelling plaintiffs in damage cases to submit to physical examinations, but I was always careful to provide that the physician of the plaintiff should be present so that no unfair advantage could be taken of the plaintiff, and that everything that was done there was done in the presence of the physician of the plaintiff. But it seems to me that the endeavor to liken a civil proceeding

to a criminal proceeding is fallacious, and there is the vice of the offer. In a civil proceeding the plaintiff may be compelled to subject himself to a physical examination. At the same time he has the mutual and co-ordinate right of compelling defendant to disclose his case. Not so in a criminal case. The defendant can hold all the papers in his possession, and there is no power to compel him to produce them. He can sit on the witness stand and say I have a paper at home, and the court is powerless to make him produce evidence to establish his guilt. That is one reason. In the second place a civil suit is tried on the weight of the evidence. Each party comes in with an equal right to be heard as to the measure of proof, but in a criminal suit the burden is on the Commonwealth to establish the case beyond a reasonable doubt and these maxims of ours about the reasonable doubt that the jury must come to the firm unwavering conviction that the defendant is guilty, have come down to us from times when judges were wont to hang a man for the stealing of a loaf of bread. Now I do not say in the present criminal procedure that we should get away from those old maxims, but I do say that while we adhere to these old maxims, which were adopted when they hung men for stealing a loaf of bread, such maxims ought not to be applied against the Commonwealth on the one side and then on the other hand the Commonwealth be compelled to disclose all their case, and the absence of precedent to my mind is strong proof that there is no warrant for a court compelling the Commonwealth to submit their evidence in advance to the defendant. It does seem to me that the able criminal, lawyers who have defended criminals charged with grave offenses if there was any warrant for such a precedent would have brought it in force. Take for instance a murder case. The Commonwealth claim that they found on the prisoner a bloody shirt, and that the blood stains are human blood, not chicken blood, or blood which he received butchering a hog, but human blood; now we all know that the experts on the part of the defense coach the lawyers for the defense while they cross-examine the experts of the Commonwealth, but I do not think there would be any warrant for a defendant charged with murder to say you must tear that shirt in two and you must give my chemist one-half of the alleged blood stains so that they can prepare a defense; or, to put it more mildly, that they can have the alleged blood stains analyzed. I do not know of any such precedent, and the very fact that Mr. Baldridge, after diligent search, has been unable to find one, to my mind, is proof that there is no warrant to force the Commonwealth to produce the evidence they are going to submit. As I said before, in a civil suit, under certain equitable rules, each side must apprise the other side of what evidence they are going to use, but I do not think it would be fair to say to the Commonwealth you must give the defendant all your side of the case so that he can examine and ransack it, and at the same time allow the defendant to keep his mouth shut. It seems to me that would be giving a defendant an unfair advantage, and it seems to me it would be unfair to compel the Commonwealth to allow a defendant to subject their samples to examination in advance, and I will overrule the application for the compelling of the production of such samples. As to experiments in open court, I do not know to what extent I will go about a matter of that kind. I did rule in the formaldehyde cases, where Mr. Hicks wanted to take a drink of the preservative, and wanted the Court to take a drink of it, and let the jury take a drink of it, I did rule that he could take a drink of it, but the Court would not, and would not have the jury do so. Mr. Hicks was going to turn the court into a laboratory and I think we said we would not have any laboratory here in court. I do not

know to what extent I would go if there was an effort on the part of the defendant to examine samples by microscopic tests—I will leave that matter open."

I hereby certify that the foregoing is a correct transcript of the opinion of the court in the case of Commonwealth *vs.* J. A. Koller, et al, in re. rule for turning over portion of sample taken by Commonwealth.

J. F. MECK,
Official Stenographer,
Courts of Blair County.

Clearfield, Pa., Sept. 21st, 1911.

Honorable James Foust,
Dairy and Food Commissioner,
Harrisburg, Pa.

Sir:—I am in receipt of your favor of the 19th inst., enclosing letter to you from Robert Crane, Esquire, of Philadelphia, Pa. Mr. Crane's letter is as follows:

Philadelphia, Pa., Sept. 19, 1911.

"James A. Foust,
Food Commissioner,
Harrisburg, Pa.

Dear Sir:—Will you kindly ask your attorneys if I understand the second section of the endorsed ice cream Act No. 38 to mean that I can use a harmless coloring matter in ice cream when the right amount or sufficient fruit is used for flavor.

Very truly yours,

"ROBERT CRANE."

In accordance with the request of Mr. Crane you have referred to me his inquiry and request my opinion as to the construction and meaning of that part of Section 2 of the Act of 24th of March, 1909, that refers to the use of coloring matter.

The Act of Assembly under consideration is one of our Food Laws and like all Food Laws is has two primary purposes in its enactment. These are, first: For the protection of the public health and second: For the prevention of fraud and deception in the manufacture and sale of food. These purposes are declared by the Legislature in the title of this Act and in the title of most of our food acts. The purposes here declared permeate every part of the Act and determine in some measure the interpretation thereof. These purposes make the declaratory parts of the Act beneficial and require, therefore, in those parts of the Act, a liberal construction, such as will fully and effectually accomplish the purposes of the Legislature. It is well known that an Act of Assembly may be at the same time beneficial and penal or rather in part beneficial and in part penal; and our Appellate Courts have recognized the principle that such Acts are to be construed liberally as to the beneficial part and strictly as to the penal.

Section 2 of the Act in question is the section that deals with the definition of adulteration and the part of said Section for construction read in connection with the first Clause of said section is as follows:—"Ice cream shall be deemed adulterated within the meaning of the Act * * * * * If it

shall contain salts of copper, iron oxide ochres or any coloring substance deleterious to health: Provided, that this paragraph shall not be construed to prohibit the use of harmless coloring matter in ice cream, when not used for fraudulent purposes."

This paragraph expressly prohibits by name two coloring substances, viz: salts of copper and iron oxide ochres. It further prohibits all coloring substances déleterious to health.

It then permits all harmless coloring matter when not used for fraudulent purposes. It is apparent that in naming specifically two coloring substances it was in the mind of the Legislature that it was clear that these two at least were not to be permitted, because they are either injurious or else their use would be fraudulent. Their status as colors was in the Legislative mind, fixed and certain; hence the prohibition of then by name. The kinds of colors which are deleterious to health is not determined in the Act; that is left to the determination of the Courts; but they are prohibited as a class.

Then follows the Proviso:—"Provided that this paragraph shall not be construed to prohibit the use of harmless coloring matter in ice cream when not used for fraudulent purposes." It is the office of the Proviso to restrict or limit, or make certain and define with exactitude the intent of the Legislature in the prohibition contained in the preceding part of the paragraph; and it is the meaning and effect of this Proviso that must be determined in order to determine the proper construction of the Act.

When is a harmless color used for fraudulent purposes and when is it not? Manifestly all coloring matter has a tendency to deceive the purchaser as to the quality of the article of food in which it is used. It is used to make the food look better and more attractive and unless its presence is declared, so that the purchaser knows the fact of its use it tends to make him believe that he is getting a better, richer or more palatable article than he really is. But it is not this general tendency of the effect of coloring Foods that the Legislature is seeking to condemn. If it were all coloring matter would be prohibited. We must look further as to the real Legislative meaning. It is a well-known fact that coloring has been used to make one article look like another so that the purchaser believes that he is buying what the article looks like when, in fact, he is getting something else. This is rank fraud upon the purchaser, and in my opinion is in part what the Legislature sought to prevent. If candy were offered for sale that was painted a chocolate color so as to make the purchaser believe he was buying chocolate candy, when in fact no chocolate is present or but a trace, that would be the kind of fraud that is sought to be prohibited. The same thing would be true of the use of a chocolate coloring matter in ice cream where no real chocolate is used. The illustration may be extended through the whole range of foods and food products.

Another class of cases where coloring is not permitted is illustrated in the following: Where a flavoring material is used which also adds color, and the requisite amount of flavoring material is not used but artificial color is added to piece out the skimping of the flavoring and make the ice cream appear to be rich in flavoring when in fact it is not, I think the Law would be violated. For instance, if chocolate is the flavoring and a very small quantity of chocolate is used and this is sought to be supplemented by an artificial color so as to make the ice cream appear richer in chocolate than it is, I believe the law is violated. But of course this brings in question the proper amount of proper flavoring in each case and as formulas vary and manufacturers have no fixed standard, it is only in gross cases that I would advise prosecution.

When is coloring permitted under the Act? I would answer that it is permitted in two classes of cases: First, Where the color used is the same color that would be produced by the fruit or nut or other flavoring used or by the common ingredients of the particular ice cream and the artificial color is added only to make uniformity or to increase the height of the color which otherwise might, by reason of conditions of manufacture, or other conditions, be dull and unattractive. Second, Where the color used is a fancy color and does not counterfeit any of the known colors produced by fruits, nuts or other flavoring material or by the use of known ingredients.

Illustration as to these classes will probably elucidate:—As to the first class:—It is well known that coloring matter is used in butter, but I think no one knows of any other color being used than yellow. Now the natural color of butter is some shade or tint of yellow. When the farmer or dairyman colors his butter he does not color it so that it may be sold as anything else than butter. He does not intend to defraud the purchaser by making him believe that it is something other than what he pretends it to be—butter. But oleomargarine is also colored yellow. Its color, in the absence of coloring matter, is generally speaking, white. When he colors his goods yellow, he makes them imitate butter, and hence his use of the yellow color is calculated to deceive the purchaser and make him think he is getting butter, when in fact he is getting oleo. In this illustration the coloring as to butter is legitimate, as to oleomargarine, fraudulent.

Apply to ice cream: A manufacturer used strawberries to flavor his ice cream. These produce a certain color. The color is well known to buyers. They glance at the cream and because of the color, they say: "that is strawberry ice cream." But suppose because of the condition of the fruit used, either in its ripeness or kind of the season of the year in which it is used, there would be a lack of uniformity in the color of the manufacturer's ice cream, or the color produced by the fruit would not be bright, or uniform or would lack intensity, in my opinion, the manufacturer may add harmless coloring matter so as to give his product the distinct strawberry color. He is not seeking to deceive. He has colored his product a strawberry color and the flavor corresponds.

The second class is illustrated in this way: Suppose at a banquet, or on special occasion, it is desired to have ice cream colored with fancy colors to correspond with some notion of the caterer, and the colors used are not such as would make the ice cream resemble in color any other ice cream, that is ice cream of any other flavor, but said colors are purely fanciful. I see no reason why such colors may not be used. For instance the color may be green. I do not know of any ice cream that by reason of composition, including flavoring is, without the introduction of a substance which adds to the ice cream only color, of a green color. The green color deceives no one. It does not make him think he is getting one kind of ice cream when in fact he is getting another.

I think this sufficiently illustrates my conclusion and for the reasons given I would advise Mr. Crane that he may use a harmless coloring matter in ice cream when "the right amount or sufficient fruit is used for flavor."

Respectfully submitted,

A. H. WOODWARD.

OPINION ATTORNEY GENERAL ELKIN JANUARY 29, 1896

COFFEE CANNOT BE SOLD, AS A COMPOUND WHICH CONTAINS CHICORY, RYE, WHEAT, PEAS AND OTHER CEREALS OR PRODUCTS, UNDER THE PROVISO TO SECTION 3 OF THE ACT OF JUNE 26th, A. D. 1895, (P. L. 317).

"The question involved is one of great importance in the construction of the provisions of the Pure Food Law. As I am informed, a firm imports teas, coffees and spices, and, in order to make a cheaper grade of coffee, a certain amount of chicory, wheat, rye, peas, etc., is dried, browned and ground with pure coffee. The mixture thus prepared is sold on the market under a label, "Best Rio," "Prime Rio," "French Rio," or "Broken Java." It is earnestly contended that the proviso to section 3, of the act above referred to, gives them the right to sell such a mixture or compound without incurring the penalties of the law. Acting upon this idea, certain labels containing the words "Coffee Compound," and showing that it is a mixture of prime coffee, English chicory and choice grain are exhibited for the purpose of securing your approval so that this "Coffee Compound" may be sold in our State without interference from those in charge of the enforcement of the law.

I have no hesitancy in saying that, if such a preparation can be sold under the law as coffee, the label is sufficient under the proviso above named. But I am of the opinion that the proviso does not cover an article of food known as "Coffee Compound" such as intended to be sold by this firm, and that any manufacturing for sale, offering for sale, or selling of the same as an article of food, would be in violation of the very letter and spirit of the act referred to.

Section 3 of the Pure Food Law defines what an adulteration is within the meaning of the act of Assembly. Any article of food shall be considered adulterated. "1. If any substance or substances have been mixed with it so as to lower or depreciate or injuriously affect its quality, strength or purity. 2. If any inferior or cheaper substance or substances have been substituted wholly or in part for it. 3. If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it." These are but three of the seven kinds of adulteration named in the act. Either one of these three definitions is sufficient to brand the "Coffee Compound," offered for sale by the firm, as an adulteration. The addition of chicory, wheat, rye or peas to coffee depreciates its "quality, strength and purity." It is a substitution, in part, of a cheaper substance to take

the place of coffe, and it could very properly be said that in such a compound a valuable constituent has been in part, abstracted from it, for part of the coffee is taken away, and a cereal substituted therefor. If the "quality, strength, or purity" of coffee can thus be depreciated under the authority of the proviso to section 3 of the above act, then is the Pure Food Law a legislative dream. If this can be done, then any adulterated article could be sold by simply marking it a compound or mixture. Allspice ground with buckwheat hulls, or cinnamon with hemlock bark, could then be labeled "compound" and sold in the open markets as such. Such a construction would render the act of 1895 a nullity.

The Pure Food Law was intended to provide against the adulteration of articles of food, and to prevent deception and fraud in the sale thereof. The legislation was much needed, and it should be enforced in such a way as to give the greatest security to the public consistent with the requirements of the act. It is true that the proviso to section 3, above mentioned, says that it "shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food." It is difficult to give any general definition of an "ordinary article of food," that would apply in all cases. It is, however, a fair presumption that no article of food adulterated within the meaning of the definition of section 3, is intended to be exempted by the proviso. The proviso is designed to cover a different class of cases. Any one relying upon the proviso to exempt him from the penalties of the law takes upon himself the laboring oar and the burden of proof is upon him to make out the exemption claimed. What is an "ordinary article of food," within the meaning of the proviso must depend upon the facts in each particular case. I am clearly of the opinion, however, that coffee, adulterated by the addition of chicory, wheat, rye or peas, is not an "ordinary article of food" intended to be exempted from the penalties of the law. On the other hand, it is an adulteration, and cannot be sold without offending against the provisions of the Pure Food Law.